Supreme Court, U.S.
FILED
MAR 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

87 No. 1605

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, *et al.*,
Petitioners

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, *et al.*,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FRED G. BENTON, JR.*
KATHERINE WHEELER
BENTON, BENTON, BENTON,
& WHEELER
601 St. Ferdinand Street
Baton Rouge, Louisiana 70802
(504) 343-6611
Attorneys for Petitioners

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

This Petition for Writ of Certiorari presents the following question for the Court's consideration:

> Whether, consistent with the equal protection clause of the Fourteenth Amendment and this Court's decisions in *San Antonio Independent School District v. Rodriguez* and *Papasan v. Allain*, Louisiana can maintain a public school financing system characterized by significant interdistrict wealth disparities which are caused by deliberate state decisions to structure the expenditure of state funds and the allocation of local financial resources in a manner that discriminates in favor of those local districts disproportionately endowed with superior local wealth.

LIST OF PARTIES TO THIS PROCEEDING

The following parties, plaintiffs and appellants in the proceedings below, are petitioners in this proceeding for writ of certiorari:

School Board of the Parish of Livingston, Louisiana
School Board of the Parish of Grant, Louisiana
Charles L. Shilling
Vernon D. Garrison
Hubert S. Stilley, Jr.
Norman J. Breland
Patricia L. Breland
James E. Smith
Gary Ratcliff
Delaine G. Gendusa
David J. Gendusa
Elizabeth Allison Breland
Andree E. Breland
Louis J. Breland
James E. Smith, Jr.
Bryan Smith
Jeremy Smith
Leslie Rae Ratcliff
Christie Lane Ratcliff
Ross J. Gendusa
Carla D. Gendusa

The following parties, defendants and appellees in the proceedings below, are respondents in this proceeding for writ of certiorari:

Louisiana State Board of Elementary and Secondary Education
Claire Roy Landry
Bro. Felician Fourrier, S.C.
Marie Louise Snellings
James V. Soileau
Gloria Harrison
Martha Scott Henry

Keith Johnson
Jack Pellegrin
Milton Hamel
Jesse H. Bankston
John A. Bertrand
A. J. Roy
Mary Evelyn Parker, former Treasurer of the State of Louisiana
Joseph H. Burris, Legislative Auditor of the State of Louisiana

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES TO THIS PROCEEDING	ii
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
Statement of Facts	3
Course of Proceedings and Disposition of the Case	13
REASONS FOR GRANTING WRIT	14
I. Under the rational basis standard enunciated by the Supreme Court in *Rodriguez*, funding disparities among local school districts, deliberately fostered by the state, violate the requirements of equal protection	16
II. Local school district funding disparities in Louisiana result from deliberate decisions by the state to treat parishes differently on the basis of local wealth	20
III. State education funding classifications in Louisiana are not rationally related to providing each school child with a "minimally adequate education" on an equal basis, maintaining some measure of local control of public school financing or any other legitimate state purpose	22
CONCLUSION	29
APPENDICES	1a

TABLE OF AUTHORITIES

Cases: Page

Brown, et al. v. Board of Education of Topeka, Kansas, et al., 347 U.S. 483, 74 S.Ct. 686 (1954) 18-19
Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956) .. 19
Papasan v. Allain, —— U.S. ——, 106 S.Ct. 2932 (1986) 17, 20, 21, 22
Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382 (1982) .. 17, 18
San Antonio Independent School District v. Rodriguez, 411 U.S. 163, 93 S.Ct. 1278 (1973) ..... *passim*
Town of Ball v. Rapides Parish Police Jury, 746 F.2d 1049 (5th Cir. 1984) 18

United States Constitution:

Amendment XIV, Section 1 ..... *passim*

Louisiana Constitution:

Article 7, Section 20 ..... 2, 4
Article 7, Section 26 ..... 2, 11
Article 8, Section 1 ..... 2, 23
Article 8, Section 13 ..... 2, 3, 23

Louisiana Revised Statutes:

R.S. 17:7(2) 2
R.S. 17:97.1 ..... 2, 11, 21
R.S. 17:421.3 ..... 2, 7, 8, 26, 27

Miscellaneous:

Comment, "Inequality in Louisiana Public School Finance: Should Educational Quality Depend on a Student's School District Residency?" 60 *Tulane L. Rev.* 1269 (1986) 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. ———

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, *et al.*,

Petitioners

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, *et al.*,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioners, School Board of the Parish of Livingston, Louisiana, et al., respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered October 22, 1987 (rehearing denied December 28, 1987), which affirmed the judgment of the United States District Court for the Middle District of Louisiana dismissing petitioners equal protection challenge to Louisiana's public school financing system.

OPINIONS BELOW

The unpublished opinion of the District Court of June 9, 1986, is reproduced at Appendix B, infra, p. 28a. The opinion of the Fifth Circuit Court of Appeals of October 22, 1987, is reported at 830 F.2d 563 and is reproduced

at Appendix A, infra, p. 1a. The Fifth Circuit's denial, without opinion, of petitioners' applications for rehearing and for hearing en banc, on December 28, 1987, is reported at 836 F.2d 1346 and is reproduced at Appendix D, infra, p. 46a.

JURISDICTION

Petitioners seek review of the judgment of the Fifth Circuit Court of Appeals of October 22, 1987, which affirmed the District Court judgment granting defendants summary judgment and dismissing petitioners' suit. Petitioners' applications for rehearing and hearing en banc were denied by the Fifth Circuit on December 28, 1987.

Petitioners invoke the jurisdiction of this Court by petition for writ of certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following constitutional and statutory provisions involved in this case are reproduced at Appendix E, infra, p. 48a:

United States Constitution:

Amendment XIV, Section 1

Louisiana Constitution:

Article 7, Section 20
Article 7, Section 26
Article 8, Section 1
Article 8, Section 13 (prior to amendment of December 23, 1987)
Article 8, Section 13(B), as amended December 23, 1987

Louisiana Revised Statutes:

R.S. 17:7(2)
R.S. 17:97.1
R.S. 17:421.3

STATEMENT OF THE CASE

Statement of Facts

Like other states, Louisiana finances its public schools with federal, state and local funds. For the 1983-84 school year (the latest complete figures at the time the record was completed in the district court), federal revenues represented 9.8% of all funds spent, state revenues represented 53.4%, and local funds contributed 36.8%. The expenditure of federal funds is not at issue in this litigation. Plaintiffs focus their complaint on the relationship between state funding sources and local funding sources, and the effects on both of state interference and manipulation, on the one hand, and deliberate disregard, on the other hand, of local funding efforts and local resources available to finance public schools. The interplay of these factors, orchestrated by the state through legislation and administrative action, results in arbitrary funding disparities among local school districts and increasingly more entrenched discriminatory impact on certain identifiably poor school districts and their students.[1]

State Sources of Education Funding

Louisiana's state-level contribution to public education in each parish comes primarily from the state's "Minimum Foundation Program" mandated by Article 8, § 13(B) of the Louisiana Constitution. Funds are disbursed under the Minimum Foundation Program ("MFP") to local districts for teachers and other school personnel, transportation costs and school lunch programs. There are absolutely no state funds allocated under the MFP for school buildings and other physical facilities and equipment.

---

[1] The terms "school district" and "parish" are used interchangeably to refer to the 64 parishes and parish school boards plus the two city school systems and city school boards that comprise the 66 units of the state system.

Another source of state funding for local schools is Louisiana's $90 million Revenue Sharing Fund which is distributed on an annual basis to reimburse local taxing bodies, including (but not limited to) school boards, a fraction of property taxes lost as a result of Louisiana's state-imposed "homestead exemption" from local property taxes, granted to homeowners for up to $75,000 of the value of their property.

Local Sources of Education Funding

In contrast with most other states where local revenues for education are drawn almost exclusively from property tax levies, Louisiana school boards obtain the bulk of their local funds from sales tax revenues, which comprise approximately two-thirds of the local funds available for education. Property tax collections, reduced by the amount lost as a result of the homestead exemption, produce a minimal portion of school revenues.[2]

Additionally, some parishes, but not others, have access to considerable revenues from mineral leases of "16th section lands" and other lands owned by the school districts.

Property Taxes and Effect of Homestead Exemption

The ability of local school boards to raise funds from property taxes is dramatically impaired by the state-imposed homestead exemption granted by Article 7, § 20(A) of the Louisiana Constitution. For example, 48% of the total of plaintiff Livingston Parish's assessed valuation is exempt from local property taxation under the homestead exemption and only 52% is "taxable". This means that for every dollar of property tax levied, 48¢ is subject to the exemption and only 52¢ can be

---

[2] See Comment, "Inequality in Louisiana Public Finance: Should Educational Quality Depend on a Student's School District Residency?", 60 *Tulane L. Rev.* 1269, 1275, (1986), note 27.

collected. This loss is only fractionally compensated by monies Livingston receives from the state's Revenue Sharing Fund, which reimburses only a portion of homestead exemption losses from local property tax millages levied for school maintenance purposes (only 47.526% of Livingston school maintenance tax losses were reimbursed in 1984) and reimburses no losses at all from local property tax millages levied to secure bonds issued for acquisition and construction of schools and equipment. Thus, the tax rate necessary to pay principal of and interest on school bonds in Livingston Parish must be doubled in order to accommodate the approximately 50% loss of revenues due to the homestead exemption.

Sales Taxes

Authorization of a local sales tax for schools was first granted by the Louisiana legislature in 1964, after a bitter fight in which proponents made an effort to have the new school sales taxes levied on a statewide basis and distributed on an equitable basis throughout the state. However, the parishes with large commercial, sales-tax-generating centers won the vote to levy and keep all sales taxes collected in their respective parishes, even though people from surrounding, less populated parishes make many of their purchases and pay sales tax in the tax-rich parishes, thus contributing to the funds available to sales-tax-rich school districts rather than their own. Sales tax revenues have grown tremendously in Louisiana as more local school districts have turned to that source, and sales tax rates have been gradually increasing. In the first year of its use, 1964-65, the sales tax raised only about 2.8 million dollars; by 1970-71, it had produced over 70 million dollars; by 1975-76, it produced about 136.8 million dollars; and by 1983-84, it produced 422.7 million dollars for public schools. The growth in local sales tax revenues since 1970-71 represents an average annual increase of about 19%. As a proportion of local revenues for current operation of

schools, the sales tax yields far in excess of local property taxes and is increasing annually. Since 1972-73, the sales tax has provided more than half the revenues generated locally for school purposes. In 1975-76, it accounted for 57.3% of total local revenues, while in 1983-84, it accounted for 63% of local school revenues.

Mineral Revenues

Revenues from the mineral lease of 16th section and other school lands do not represent a high proportion overall of local revenues available for support of schools. Since 1966-67 these revenues have comprised less than 3% of the total annually. However, they do constitute a substantial portion of local revenues in particular parishes where oil and other natural wealth tends to be concentrated. In Cameron Parish, rents (primarily from mineral leases) constituted nearly 46% of total local school revenues in 1981-82 and raised over $1,911 per pupil. In Vermillion Parish, they comprised about 28% of local revenues and raised about $451 per pupil. In other parishes these revenues are not quite as substantial, but nonetheless add significantly to local financial support. Twenty-one districts have no revenues at all from this source.

Minimum Foundation Program

Under the MFP formula annually approved by the Louisiana legislature, costs to be paid by the state through the MFP are allocated to parishes on what is essentially a "classroom" basis. Each "school" having more than 117 students is allowed one teacher for each 25 children. The ratio for grades K through 3 can be 20-to-1. In addition, the formula adds additional teachers on a "parishwide" basis, depending upon the overall school population. The aggregate number of teachers in each parish determines the number of "support persons" for which costs are allocated under the MFP. The term "support person" means principals, assistant principals, instructional supervisors, vocational teachers, social

workers and "other certified or licensed personnel". The formula has a sliding scale which allocates one support person for each 15 to 20 teachers, depending upon the total number of teachers in each parish. Teachers' salaries payable from MFP funds are fixed by statute, R.S. 17:421.3. Salaries of support persons payable under the MFP are fixed at 1⅓ times the teachers' salary schedule of R.S. 17:421.3.

In addition to allocating funds for teachers and support personnel, including sabbatical leave, sick leave and severance pay and workmen's and unemployment compensation, the MFP formula allocates funds for utilities, insurance, transportation and special education program costs.

The state then, supplying funds from its general revenues, finances approximately 94% of the MFP and the local school districts in the aggregate are responsible for the remaining 6% of the MFP by virtue of the deduction from each parish's allocation under the formula of an amount equal to a 5½-mills property tax in the parish.

Three things are particularly notable about the state's MFP formula. First of all, the amounts allocated to the parishes under the formula pursuant to R.S. 17:421.3 for the payment of teachers and support personnel are unrealistically low and cannot, without significant subsidies from local funds, actually put any teachers in the classroom. The schedule under R.S. 17:421.3 shows that in 1983-84 the starting salary funded with state MFP monies for a teacher with a bachelor's degree and no experience was $11,375. The highest salary paid under the schedule was $17,471 for teachers with a Ph.D. degree and 12 years experience. Thus, in reality, the salary costs for teachers and support personnel paid from MFP funds are far below market rates and, by themselves, are too low to actually employ and retain teach-

ers.[3] Because of this, local school boards must raise significant sums of money above and beyond their contribution to the MFP in order to pay the basic education cost of providing teachers.

Second, the method of calculating and allocating MFP teacher costs has the added effect of reinforcing and aggravating, rather than alleviating, the problem poor parishes have in attracting and retaining teachers with more education and experience. To each parish, the MFP allocates teacher costs based on the actual levels of education and experience of the teachers presently in the system. Thus, under the formula, parishes that have relatively more teachers with higher degrees and more years of experience receive more MFP funds in accordance with the schedule contained in R.S. 17:421.3. For example, 59% of the teachers in East Baton Rouge, a relatively wealthy parish, have 10 or more years of teaching experience, compared with 46% of the teachers in Livingston, a relatively poor neighboring parish. On the other end of the spectrum, 19% of East Baton Rouge teachers have 5 or fewer years of experience compared with 29% of Livingston teachers. A comparison of plaintiff Grant Parish with its relatively richer neighbor, Rapides Parish, yields the same results. 62% of Rapides' teachers have 10 or more years experience compared with 55% of Grant's teachers. 20% of Rapides' teachers have 5 or fewer years of experience compared with 30% of Grant's teachers.[4] Despite their superior resources available to supplement the MFP salary allotment, East Baton

---

[3] According to the *135th Annual Financial and Statistical Report of the Louisiana Department of Education for the 1983-84 School Year* (the "1983-84 Annual Report"), the average classroom teacher in Louisiana made approximately $18,400, which itself was 20% lower than the national average of $22,029. (1983-84 Annual Report, pps. 43-44, reproduced at Appendix F, infra, p. 59a for reference by the Court.)

[4] (See 1983-84 Annual Report, pps. 186, 206, 246 and 278, reproduced at Appendix G, infra, p. 60a for the Court's reference.)

Rouge and Rapides, because of their relatively greater number of more educated and experienced teachers, in fact receive more funds per teacher from the MFP salary allocation than do petitioners, Grant and Livingston Parishes. The effect of this is to lock in, under the MFP, the salary discrepancies that hamper poor parishes' ability to attract and retain better educated and more experienced teachers.[5]

Third, in addition to the fact that the state, through its MFP, furnishes insufficient funds to provide minimally competitive salaries to attract and retain teachers, no MFP funds are provided at all to pay for land, school buildings and equipment. All school facilities, equipment and land must be financed from local resources, usually from the proceeds of bond issues secured by local property or sales taxes. Therefore, in addition to its 5½-mills contribution to the MFP, each parish school board must raise and spend significant sums from local resources to provide the basic necessities of education—teachers, classrooms and equipment.

Under the state's MFP formula approved by the legislature each year, the "5½-mills equivalent" deducted from each parish's allocation of MFP funds is based on valuation of "taxable" property in a given parish. No deduction is computed against the homestead exempt assessments. Throughout this litigation, the state has characterized this "5½-mills equivalent" adjustment as an attempt to partially equalize the amounts of monies that will be available to each parish under the MFP from both state and local sources. Under the state's theory, those parishes with lower taxable property values have a smaller deduction from their portion of the MFP allocation and, therefore, should receive a larger proportion of state funds under the MFP. This is not the case, because

---

[5] See Appendix H, infra, p. 61a, a recent newspaper article which graphically describes this phenomenon.

the amount of the 5½-mills deduction is arbitrarily affected by the proportion that homestead-exempt property in each parish bears to total assessed valuation. A property-tax-rich parish with a relatively large proportion of homestead-exempt property would have a relatively smaller sum deducted from its MFP allocation than would a property-tax-rich parish with a relatively small proportion of homestead-exempt property. The same is true of property-tax-poor parishes. Furthermore, the proportion of homestead-exempt property in each parish bears no relationship to the number of school children in each parish, who come from taxable homes their parents rent, as well as tax-exempt homes their parents own. Therefore, the homestead exemption which affects the 5½-mills deduction arbitrarily undermines any equalizing effect.

Plaintiffs have shown that, because of the absence of any correlation among such factors as percentage of property subject to homestead exemption, number of students, taxable homes, tax-exempt homes, and overall taxable wealth, the 5½-mills deduction has a materially arbitrary effect. It is evident, from the exhibits in the record, that the 5½-mills deduction does not have the effect of equalizing disparities in local wealth. Theoretically, school districts that rank lowest in overall funds available for education would rank highest in funds per student received from the state. The record in this case demonstrates that this does not work out as claimed. Livingston Parish ranks next to last in taxable assessed value per child and should, theoretically, rank near the top in the amount of MFP monies per child to be received from the state, if MFP moneys actually equalize. The opposite is true. Livingston ranks near the bottom in MFP funds from the state.

Not only is the 5½-mills "equalizing" deduction from state MFP allocations arbitrary, rather than equalizing, but, in effect, it is rendered absolutely de minimis by the deliberate choice of the state to exclude sales tax reve-

nues, which comprise the bulk of local school resources, from any "equalization" under the MFP. Once the big merchandizing parishes got the sales tax, the legislature made sure they kept it and all of its benefits by enacting R.S. 17:97.1, which specifically excludes sales tax wealth from being taken into account for purposes of "equalization" under the MFP formula. The deliberate choice of the state to exclude from the MFP formula sales tax revenues, which represent two-thirds of the local school funding resources, completely negates any claim that the MFP formula has any equalizing effect on local school finance.

Another local resource deliberately excluded from the state's MFP formula under R.S. 17:97.1 is the revenues that some local school systems receive from the lease of 16th section and other school lands, which constitute a substantial portion of local revenues in particular parishes where oil and other natural wealth tends to be concentrated. For example, in mineral wealthy Cameron Parish, the school board, until recently, did not even levy a sales tax for support of schools and still was able to generate and spend the most money per student of any parish ($6,098 in 1983-84).

Revenue Sharing Fund

The $90 million Revenue Sharing Fund referred to above is established by Article 7, § 26 of the 1974 Louisiana Constitution. Under the Constitution, the $90 million is to be distributed to eligible tax recipient bodies in each parish, not just school boards, to partially offset local property tax losses caused by the state-mandated homestead exemption. Eighty percent of the revenue sharing funds are distributed to each parish, based on the population of each parish compared with the total state population according to the latest state census data. The remaining 20% of the fund is distributed to each parish on the basis of the "total number of homesteads" as compared with the state total. The legislature has

annually readopted the same basic formula, based upon population and number of homesteads, for the distribution of funds to the parishes. The overwhelming majority of all local taxing bodies, including school boards, suffer substantial homestead exemption losses which are not reimbursed from the Revenue Sharing Fund. Yet despite the gross shortfall in unreimbursed homestead exemption losses in every parish in the state, the legislature creates each year "excess funds" in the appropriation of the $90 million. The "excess funds" are divided among local tax recipient bodies as local legislative delegations direct between legislative sessions. The "excess funds" classification is achieved by restricting the amount available to reimburse losses from the homestead exemption, disqualifying for reimbursal losses from property taxes levied after 1978, reimbursing no homestead losses from taxes levied to pay bonds, and providing that the amount of "excess funds" available from year to year cannot be reduced. The "excess funds" provisions of the annual revenue sharing bills have no legitimate public purpose and are totally irrational, except in the context of establishing and maintaining a base of political interdependence and support between local legislative delegations and their subservient school boards, police juries and municipal councils.

Local Taxing Effort

Finally, as noted above, in addition to each local district's 5½-mills contribution to the MFP, local school boards must also contribute funds to pay the basic education costs of providing minimum competitive teachers' salaries and all school buildings and equipment. Funds needed to pay these basic costs are derived from other local property taxes, local sales taxes and, where available, mineral resources. Plaintiffs have demonstrated in the record that Livingston and a number of other poorer parishes, when all resources are combined, make a heroic taxing effort to fund their local schools when compared with relatively wealthier parishes, but to no avail. De-

spite this fact, "local taxing effort" is not a factor taken into consideration in determining the distribution of state monies under the MFP. The record shows the extent of the gross disparities that exist in the amount of state and local moneys expended per child from parish to parish. Livingston Parish remains on the bottom with no improvement over the years. To the contrary, the disparity is widening each year between the tax-rich and tax-poor parishes. In 1983-84, the Livingston expenditure per child was *$1,892*, counting state and local funding. This ranks Livingston last in the state. The second richest parish, West Feliciana, had an expenditure per child of *$3,649*. Projected to a classroom basis of 25 students, the disparity is a classroom difference of $47,300 for Livingston compared with $91,225 for West Feliciana. In addition, West Feliciana has in the bank, drawing interest, a sales tax surplus in the millions, while plaintiff parishes do not have sufficient money to pay competent and experienced teachers' salaries.

Course of Proceedings and Disposition of the Case

The instant suit was filed on behalf of several groups of plaintiffs, alleging the unconstitutionality, on equal protection grounds, of the Louisiana system of financing public elementary and secondary schools in the state. Plaintiffs alleged that Louisiana's public school financing scheme as a whole, reflected in its system of tax assessments, tax exemptions and state fund distributions to parish school districts, yields gross disparities in funding among local districts, results in patently unequal and inequitable educational opportunities for school children in certain parishes, reflects deliberate state decisions to treat parishes differently on the basis of local wealth, and bears no rational relationship to any legitimate state purpose.

Plaintiffs invoked the jurisdiction of the District Court under 28 U.S.C. Section 1343 as a matter arising under 42 U.S.C. 1983, alleging violations under color of state law of the equal protection guarantees of the Fourteenth Amendment to the United States Constitution.

Plaintiffs include the Livingston and Grant Parish School Boards, as well as the individual members of these Boards, and all other Louisiana school boards similarly situated. Plaintiffs also include citizen taxpayers and parents acting for themselves and their minor school children who attend the public schools in said parishes. Plaintiffs moved for preliminary class certification as to each class represented, but the District Court deferred action on this motion pending the outcome of cross motions for summary judgment filed by plaintiffs and defendants. Defendants include those officers of the State of Louisiana charged with administering the state's public school financing system.

Plaintiffs sought a declaratory judgment that the application of Louisiana's constitutional, statutory and administrative system of financing public education violates the equal protection guarantees of the United States Constitution and, further, requested injunctive relief against the continued operation of the system in its present form.

After extensive discovery by interrogatories, production of documents and admissions of fact, both plaintiffs and defendants sought summary judgment. The District Court for the Middle District of Louisiana sustained defendants' motion for summary judgment, concluding that "the Louisiana tax assessment/exemption/distribution system, as it affects the funding of public education in the State of Louisiana, does not violate . . . the Fourteenth Amendment, § 1 of the United States Constitution."

Plaintiffs appealed the District Court's decisions to Fifth Circuit Court of Appeals. On October 22, 1987, the Fifth Circuit affirmed the judgment of the District Court. On December 28, 1987, the Fifth Circuit denied plaintiffs' application for rehearing and suggestion for hearing en banc.

REASONS FOR GRANTING WRIT

The basic issue raised by the instant case, and not heretofore answered by this Court, is whether, in the face of the requirements of equal protection, a state can maintain a public school financing system characterized by significant wealth disparities among its local school districts, if such wealth disparities have been caused by deliberate state decisions to structure the expenditure of state funds and the allocation of local funds in a discriminatory manner. In *San Antonio Independent School District, et al. v. Rodriguez, et al.*, 411 U.S. 1, 93 S.Ct. 1278 (1973), the seminal equal protection case on public school financing, this Court upheld the constitutionality of interdistrict disparities in the Texas public school system because the Court found that (1) the interdistrict funding variations result from Texas allowing local control and enhancement of public schools through local taxing efforts, a legitimate and constitutionally permissible state purpose, and (2) by the manner in which it has structured its "minimum foundation school program" and distribution of state funds, Texas has genuinely attempted to ameliorate funding disparities caused by variations in local wealth. The Court can make no such findings here. The key distinction between *Rodriguez* and the instant case is that Louisiana cannot make any principled claim that the discriminatory features of its public school finance system serve any legitimate state purpose or that the state has made any sincere attempt to ameliorate local funding disparities. Unlike the Texas system approved by the Court in *Rodriguez*, the Louisiana public school financing system raises the question of whether local school district funding disparities, deliberately fostered by the state and serving no otherwise legitimate state purpose, violate the requirements of equal protection.

I.

Under the rational basis standard enunciated by the Supreme Court in *Rodriguez*, funding disparities among local school districts, deliberately fostered by the state, violate the requirements of equal protection.

Defendants argued, and both the district and appellate courts agreed, that the instant case is legally indistinguishable from *Rodriguez*. According to defendants both cases present the same issue, namely, whether a state may establish a system for funding public education which relies in part on funding from local sources with the result that the total amount of money spent per child varies among the local school districts of the state because of differences in local wealth. According to defendants, *Rodriguez* stands for the proposition that disparities among local schools districts in funds spent per child because of variations in local wealth do not violate the equal protection guaranties of the United States Constitution. They argue that *Rodriguez* insulates from equal protection challenge any state public school finance system which, like the Texas system, utilizes both state and local funds and which, because of variations in local wealth, is characterized by disparities in funds available to local school districts. Although defendants concede that there are certain components of the Louisiana public school financing system that distinguish it from the Texas system found acceptable in *Rodriguez*, they urge the lower courts to simply ignore them as irrelevant under the "minimum scrutiny" rational basis test employed by this Court in *Rodriguez*. Indeed, in order to facilitate bringing the Louisiana system under the rubric and ruling of *Rodriguez*, defendants assert for the Louisiana system, without pointing to any evidence in support of such assertions, the same rational basis relied on by Texas in support of its public school funding disparities, namely, meaningful local control of school funding and programs through local taxing efforts.

What is important to recognize about the *Rodriguez* decision is that, although it applied the rational basis

test in examining the Texas public school financing system, the Court did not place an imprimatur on all interdistrict disparities that result from school financing systems that rely on dual funding from both state and local sources. In *Papasan v. Allain*, —— U.S. ——, 106 S.Ct. 2932 (1986), the Court explained its *Rodriguez* decision in the following terms:

> "*Rodriguez* did not, however, purport to validate all funding variations that might result from a state's public school funding decision. It held merely that the variations that resulted from allowing local control over local property tax funding of the public schools were constitutionally permissible in that case.[16]

> "[16] . . . *Rodriguez*, however, merely upheld the overall structure of Texas public school financing and the component of that system allowing for variations in funding due to local taxation. *We do not read Rodriguez as validating all disparities that might occur in a system that has an overall structure similar to that approved in that case.*" [Emphasis added.]

Louisiana's reliance on *Rodriguez* to validate the constitutionality of Louisiana's public school financing system simply because it has an overall structure similar to that of Texas and finances its school from both state and local sources, is, by the words of this Court in *Papasan*, misplaced. Louisiana cannot merely invoke *Rodriguez* as a substitute for demonstrating on its own merit a rational basis for the funding disparities in its system.

Neither *Rodriguez*, nor subsequent cases employing the rational basis standard of equal protection review in the area of public education have turned away an equal protection challenge without carefully examining whether the challenged features, which yield discriminatory results, are otherwise rationally related to a legitimate state goal. Ten years after *Rodriguez*, in *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382 (1982), the Supreme Court again considered the equal protection status of the administration of the Texas public schools, this time in relation to the state's decision not to expend any state funds on

the education of children who were not "legally admitted" to the United States. The Court used the same approach that it had in *Rodriguez* and employed the same standard of review, the rational basis test. As in *Rodriguez*, the Court reiterated that education is not a fundamental right and concluded that undocumented aliens were not a suspect class. The Court, however, examined closely the goals which Texas claimed were served by its exclusion of illegal aliens from the public school system and concluded that the justifications for the discrimination offered by Texas were "wholly insubstantial in light of the costs involved to these children, the state and the nation". *Plyler*, supra at 230, 102 S.Ct. at 2401. In *Papasan*, supra, the Court was faced with the claim that Mississippi distributed income from school section lands or substitute funds unequally among the school districts in the state to the detrimate of certain local school districts. This Court overruled the appellate court's automatic invocation of *Rodriguez* to sustain the Mississippi system and remanded the case to the appellate court for a substantive examination of whether or not the variations in benefits received by the school districts are in fact rationally related to a legitimate state interest. *Papasan*, supra, 106 S.Ct. at 2946.

These cases demonstrate that the rational basis standard of review is not a talisman to be used to avoid any scrutiny whatsoever of the challenged state activity but, rather, involves two inquiries which must be undertaken in good faith: (1) does the challenged activity have a legitimate purpose, and (2) is it reasonably calculated to achieve that purpose? Equal protection review for rationality should not be relegated to a perfunctory rubber stamp of legislative whim. The rational basis standard "is not a toothless one." See *Town of Ball v. Rapides Parish Police Jury*, 746 F.2d 1049 (5th Cir. 1984).

The initial point of departure for any equal protection examination of a state-created, regulated and funded public school system is this Court's decision in *Brown*,

et al. v. Board of Education of Topeka, Kansas, et al., 347 U.S. 483, 74 S.Ct. 686 (1954). In *Brown*, the Court characterized the importance of education and the duty of a state, once it has undertaken to provide public education, as follows:

> "Today education is perhaps the most important function of state and local governments. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship . . . In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. *Such an opportunity where the state has undertaken to provide it is a right which must be made available to all on equal terms.*" [Emphasis added]

The principle that a state undertaking to provide a right to all of its citizens must do so on equal terms is a core requirement of equal protection, even in the absence of discrimination against a suspect class and even when the right afforded by the state is not a fundamental right guaranteed by the United States Constitution. See *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585 (1956). To prevent the grant of such state-created right from being a hollow and empty gesture to certain of the state's citizens, a corollary of this principle is the requirement that the right be made available to all with an even hand, even to the extent that this requires the state to take ameliorative steps to enable or facilitate the exercise of the state-granted right by certain of its citizens. *Griffin v. Illinois*, supra.

Rodriguez confirms this principle with respect to the funding of the state-granted right of public education. In *Rodriguez*, this Court approved the Texas "minimum foundation school program" precisely because the program *did not* merely distribute an equal amount of funds per child but, instead, by the manner in which it structured its Local Fund Assignment, attempted to ameliorate funding disparities caused by the variations in local wealth

which resulted in unequal funds for schools from local sources. The genuine attempt by Texas to "equalize" was the key to the Court's refusal to invalidate the Texas program. Justice Powell found that Texas did not purposefully foster the disparities but, instead, acted with an even hand in providing funding for public education and took affirmative steps to ameliorate the disparities resulting from variations in local funds:

> "In sum, to the extent that the Texas system of school financing results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities were the product of a system that is irrational as to be invidiously discriminatory. *Texas* has acknowledged its shortcomings and *has persistently endeavored*—not without some success—*to ameliorate the difference in levels of expenditure* without sacrificing the benefits of local participation. The Texas plan is not the result of hurried, ill-conceived legislation. It certainly is not the product of purposeful discrimination against any group or class." [Emphasis added]

In *Papasan*, this Court distinguished, for the purpose of equal protection analysis, funding disparities caused by a deliberate state decision to divide resources unequally among school districts from funding disparities that exist despite a state's ameliorative efforts. *Papasan* held that the alleged unequal distribution by the State of Mississippi of benefits from public school lands was sufficient to state a claim under the Equal Protection Clause because, unlike *Rodriguez*, "the differential financing is attributable to a *state decision* to divide state resources unequally among school districts". [Emphasis added]

II.

Local school district funding disparities in Louisiana result from deliberate decisions by the state to treat parishes differently on the basis of local wealth.

An examination of the Louisiana public school finance system, in light of *Rodriguez* and *Papasan*, demonstrates

that, given the interrelationship of the components of Louisiana's tax assessment, exemption and distribution system for funding public education, as controlled on the state level, the Louisiana system, including funds from both state and local sources, represents a deliberate state decision to divide resources unequally among school districts. Approximately two-thirds of local school revenues in Louisiana come from local sales taxes and mineral revenues. The collection of local sales taxes are, and have always been, concentrated in the large commercial and merchandizing centers of the state. Sales taxes for support of local schools are not paid exclusively by the residents of the parishes benefiting from such taxes. For example, the citizens of Livingston Parish, a predominantly rural parish with few commercial and merchandising enterprises, pay much of their sales tax to the East Baton Rouge Parish school system, and Grant Parish citizens pay much of their sales tax to the Rapides Parish school system. Despite this fact, Louisiana has made a deliberate decision in R.S. 17:97.1 to allow the parishes to keep all the money they collect from sales taxes and not to have to account for them in the "equalizing" component of the MFP. This delegation of sales taxing power to the benefit of a few parishes having within their limits most of the state's merchandising centers and other big sales tax generators, is a form of "distribution" of the state's sales tax wealth similar to the state's distribution of money. The same decision has been made by the state in R.S. 17:97.1 with respect to mineral wealth. Mineral income for the support of local schools is concentrated in a few parishes that are not required to divide or otherwise share or account for their wealth with other parishes. The state's "distribution" by delegation of sales tax and mineral income, coupled with the arbitrary effect of the state-imposed homestead exemption and the inadequate and highly politicized distribution of state revenue sharing funds, constitute the primary cause of the gross disparities among parishes in

local funding per child. Distribution by Louisiana of state funds without any genuine attempt at "equalization", when combined with the state-fostered disparities in local funds available, violates the requirements of equal protection. Such a system is evidence of a deliberate decision by the state to set in concrete the division of resources unequally among school districts. Such action violates the requirements of *Rodriguez* that ameliorative steps be taken to minimize disparities among local school districts in public education funding. Additionally, such action constitutes the kind of deliberative state-fostered disparity disapproved by the Supreme Court in *Papasan.*

III.

State education funding classifications in Louisiana are not rationally related to providing each school child with a "minimally adequate education" on an equal basis, maintaining some measure of local control of public school financing or any other legitimate state purpose.

Louisiana's public education system does not pass constitutional muster under the rational basis standard for equal protection. Louisiana has no constitutionally valid purpose for developing some of the classifications at issue in the instant case and cannot reasonably have concluded that the challenged classifications are rationally related to a legitimate state purpose.

Plaintiffs have shown that certain classifications claimed by the state to have a constitutionaly valid purpose, do not. For example, Louisiana's homestead exemption from property taxation was originally enacted to help "heads of households" save family homes during the Great Depression. Today, many families and individuals cannot afford to become the owners of their places of residence and yet, despite this fact, they bear a disproportionately larger burden of property taxation for support of local schools, passed on to them as a component of rent, than do homeowners. Also, the classifications in-

cluded in the annual distribution by the legislature of revenue sharing funds, which arbitrarily exclude from consideration for reimbursement certain homestead exemption losses and which create artificial "excess funds" for politicized distribution even in those parishes where homestead exemption losses are not fully reimbursed, cannot be claimed to serve any legitimate state purpose at all. Although, having a 5½-mills local contribution component in the MFP formula might be said to serve the legitimate goal of requiring a local revenue-raising effort for the support of schools, the state legislature's deliberate exclusion of sales tax revenues and mineral wealth, which in the aggregate represent two-thirds of local resources, from the equalization component of the MFP formula cannot be claimed to serve any purpose other than to discriminate in favor of sales tax and mineral wealthy parishes.

If the classifications at issue in the instant case are examined for the purpose of determining whether they are rationally related to the state's articulated goals of providing each student a "minimally adequate education" on an equal basis, while at the same time allowing local financial control and enhancement of educational opportunities, it becomes clear that the state could not have reasonably concluded that its classifications are rationally related to such purposes.

There is nothing in the Louisiana Constitution's goals, voted by the people in 1973, which guarantees local control of schools and school funding. Article 8, § 1 of the Constitution requires that the *legislature* "provide for the education of the people of the state" and "establish and maintain a public educational system". The Preamble to Article 8 declares that "the goal of the public educational system is to provide learning environments and experiences . . . designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential". Article 8, § 13(B) mandates that "the legislature shall appropriate funds

sufficient to ensure a minimum foundation program of education in all public elementary and secondary schools. The funds appropriated shall be *equitably* allocated . . . according to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature . . .". The record in this case demonstrates that the totality of resources for education, from both state and local sources, are, as a result of state legislative and administrative design, inequitably allocated. Additionally, there are numerous state statutes regulating, at the state level, the details of education in Louisiana which contradict any state claim to promoting local flexibility and control. Finally, the record demonstrates that certain of the state's poorer parishes are extremely hard pressed to provide even the basic component's of a "minimally adequate education", much less to exercise flexibility and control for the purpose of enhancing their educational program through local revenue raising efforts and ability.

Defendants argued throughout this case, and the Fifth Circuit concluded, that plaintiffs have not proved, and the record contains no evidence, that any Louisiana school child was deprived of a "minimally adequate education" because of insufficient funds. This conclusion was relied on by the Fifth Circuit to justify submitting Louisiana's school financing system to extremely deferential rational basis review. What the Fifth Circuit failed to recognize is that, absent total denial of educational opportunity, the problem of quantifying and measuring, in the abstract, what constitutes a "minimally adequate education" presents, it is submitted, an impossible and futile task. That is because the standard is relative and constantly changing and must of necessity, be a comparative, rather than fixed, standard. One-room school houses with a single teacher for all grades may have provided, at one time in history, a "minimally adequate education", but can no longer be claimed to do so when compared with modern schools having a teacher and classroom for every grade. By the same token, schools staffed by mini-

mally qualified and inexperienced teachers, who must educate students in ill-equipped classrooms, are less capable of providing a "minimally adequate education" than schools that can offer more qualified and experienced teachers, more and better equipped classrooms and a greater variety of educational experiences and opportunities because of superior funding resources. "Minimum Foundation Program" and "minimally adequate education" are mere labels to which the Court should not succumb. Identification of the point at which the system absolutely fails to provide some school children a "minimally adequate education" is, at best, elusive. The requirement of equal protection applies not only to classifications which absolutely deny an individual access to some "minimum" quantum of a right, privilege or opportunity otherwise available to others, it also applies to and prohibits classifications by state government which treat individuals differently without there being a rational basis for doing so. Plaintiffs have asked the Court to examine the discriminatory effects that legislative and administrative classifications made on the state level in Louisiana have had on the relative ability of different parishes to provide a "minimally adequate education" and to determine whether such classifications are rationally related to the state's articulated educational goals. The Court must observe, and the record unquestionably demonstrates, that, despite the absolute necessity of utilizing local resources beyond the MFP to assure such basic components of a "minimally adequate education" as teachers and classrooms, and despite the state's avowed purpose of providing a "minimally adequate education" on an equal basis, the state, in fact, limits in a discriminatory manner and impairs certain local school boards' ability to raise sufficient funds to provide their essential part of such "minimally adequate education".

Throughout its opinion, the Fifth Circuit assumed that Louisiana's MFP provides or ensures a "minimally adequate education" to every school child in the state. According to the Fifth Circuit:

> "This is not a case where the state has failed to provide school children in the plaintiff parishes with a minimally adequate education. Although the plaintiffs so complain on appeal, they made no attempt to prove before the District Court that any child received an inadequate education. Furthermore, the record contains no evidence whatever that any Louisiana school child was deprived of a minimally adequate education because of insufficient funds." (Appendix A, p. 10a)

Throughout its opinion, the Fifth Circuit characterized and described the MFP in the following terms:

> "The cost side [of the MFP] establishes the minimum cost of providing each of the services funded under the MFP." (Appendix A, p. 3a)

> "The formula allocates to local school boards funds to provide at least one teacher for every twenty-five students, as well as funding for other support personnel including principals, assistant principals, instructional supervisors, visiting teachers and social workers. . . . Sabbatical and sick leave pay, injured and unemployed workers compensation costs, utilities, insurance, and materials and supplies are also provided for, with the funds distributed on the basis of student membership." (Appendix A, p.3a)

> "As noted, the 'cost side' of the MFP formula calculates for each district the total cost of providing every student in the district the educational services—such as one teacher per twenty-five students and appropriate numbers of other personnel, special education costs, utilities, supplies, insurance and the like—which the program contemplates every district and student having." (Appendix p. 12a)

This description of the services paid for by the MFP, including both state and local contributions, is purely hypothetical. For example, if one examines the teachers' salary schedule on the basis of which the MFP costs are calculated under R.S. 17:421.3, it is evident that the amounts allocated to the parishes under the formula cannot realistically, without significant local contribution,

put any teachers in the classroom. The MFP provides woefully insufficient funds to provide minimally competitive salaries to attract and retain teachers in any parish. Because of this, local school boards must raise significant sums of money above and beyond their contribution to the MFP in order to place teachers in classrooms. The "teacher" is an essential element of a "minimally adequate education" not provided in full by MFP moneys, and local resources are an essential and necessary ingredient of this basic education cost. A poor school district's inability to raise sufficient funds locally to offer the competitive salaries necessary to attract and retain teachers forces it to choose between two equally unpalatable courses, both of which have the effect of impairing its ability to provide a "minimally adequate education". It can either increase class sizes per teacher, and thereby degrade its students' educational opportunities, or it can hire and retain only the least educated and least experienced teachers, with the same effect. In either case, it is forced to offer its students a comparatively less "adequate" education than is available in wealthier neighboring parishes.

It should also be noted that the method of calculating and allocating MFP teacher costs has the added effect of reinforcing, rather than alleviating, the problem poor parishes have in attracting and retaining teachers with more education and experience. Under the formula, parishes that have relatively more teachers with higher degrees and more years of experience receive more MFP funds in accordance with the schedule contained in R.S. 17:421.3.[6] The effect of this is to lock in, under the MFP, the salary discrepancies that hamper poor parishes' ability to attract and retain better educated and more experienced teachers and, consequently, to impair their ability to provide a "minimally adequate education". (See Appendix H, p. 61a)

---

[6] This factor, rather than "differing economics of scale" as suggested by the Fifth Circuit, accounts for the difference in per-student MFP costs among the parishes (See Appendix A, p. 13a).

In addition to the fact that the MFP furnishes insufficient funds to provide minimally competitive salaries to attract and retain teachers, no MFP funds are provided at all to pay for land, school buildings and equipment. All school facilities, equipment and land must be paid for from local resources, usually from the proceeds of bond issues secured by local property or sales taxes. The "classroom", another essential element of a "minimally adequate education", is not accounted for or funded at all under the MFP.

The MFP cannot be characterized as providing or assuring a "minimally adequate education" when it does not assure minimally competitive salaries to pay real teachers and when it provides absolutely no funds at all for classrooms and equipment, both critical elements of a "minimally adequate education", the cost of which must be covered by any system that purports to ensure a true minimum foundation program of educational funding. Neither can local district resources, above and beyond the local contribution to the MFP, be characterized as "supplemental", when such funds are not a mere supplement to a true minimum foundation program covering basic educational costs, but instead are a necessary component of the basic cost. Local resources, in addition to those contributed to the MFP, are a necessary component of the basic cost of providing minimum competitive salaries for teachers and provide the sole source of revenues for schools and equipment.

The Court must observe, among other things, that the record unquestionably demonstrates that despite the absolute necessity of utilizing local resources to assure a "minimally adequate education", and despite the state's avowed purpose of providing such "minimally adequate education" on an equal basis, the state, in fact, limits in a discriminatory manner and impairs certain local school boards' ability to raise sufficient funds to provide their part of such "minimally adequate education". For example, the state hamstrings local boards' ability to gen-

erate revenues by the state-imposed homestead exemption from local property taxes of $75,000 of the value of all owner-occupied residential property and by state constitutional and statutory ceilings on the amount of sales tax and property tax local districts can collect. This has a known differential impact and adversely affects some parishes more than others. Yet instead of counteracting such effects, the state locks in local school district wealth disparities by ignoring and disregarding in its MFP formula local district taxing efforts, by deliberately excluding from its formula two-thirds of the local resources available for education funding which are produced by sales taxes and mineral income, and by legislatively manipulating the state's Revenue Sharing Fund in a manner designed to assure that such fund will never adequately reimburse to the local districts tax income lost as a result of the state's homestead exemption. A state system that does not realistically furnish sufficient funds to pay the minimum costs of providing teachers and classrooms cannot be claimed to provide or ensure a "minimally adequate education" for each school child in the state, if the state, at the same time, refuses to take into account and, indeed, acts to impair local school districts' financial ability to raise sufficient additional funds necessary to meet such vital and basic costs.

CONCLUSION

The State of Louisiana has designed and implemented a public education financing system that, when the combined effect of all of its component elements are taken into account, impairs, rather that assures, the ability of certain local school boards to furnish a "minimally adequate education" to their students, aggravates and entrenches, rather than ameliorates, inequalities in local funding resources available for education, and undermines, rather than fosters, local autonomy over public education financing, in clear contradiction to the stated goals of the system and in clear violation of the Equal Protection Clause of the United States Constitution.

Plaintiff elementary and secondary school children and several hundred thousand school children similarly situated in tax-poor parishes are receiving an inferior education in Louisiana as a result of substantially less money being spent for their education than in a relatively few tax-wealthy parishes. Unlike the Texas system, which makes a serious and legitimate effort to ameliorate local wealth disparities by taking into account in its minimum foundation program a full variety of indicia of local wealth, the Louisiana system deliberately excludes major sources of local wealth in its "equalizing" formula in order to avoid having to truly equalize.

Unless a writ is granted, the decision in this case will lock in discrimination at a time when major changes for good are apparently in progress in Louisiana. Louisiana must adopt a school financing plan that assures that all children in Louisiana, regardless of their place of residence, will receive a bona fide minimally adequate education.

For the foregoing reasons, the School Board of the Parish of Livingston, Louisiana, et al., respectfully submit that this Court should grant a writ of certiorari, reverse the decision of the Fifth Circuit in the instant case and find that the present Louisiana school financing scheme denies equal protection of the laws in violation of the Fourteenth Amendment of the U.S. Constitution.

Respectfully submitted,

FRED G. BENTON, JR.*
KATHERINE WHEELER
BENTON, BENTON, BENTON,
& WHEELER
601 St. Ferdinand Street
Baton Rouge, Louisiana 70802
(504) 343-6611
Attorneys for Petitioners

* Counsel of Record

APPENDICES

TABLE OF CONTENTS

	Page
APPENDIX A—	
Opinion of United States Fifth Circuit Court of Appeals	1a
APPENDIX B—	
Opinion of United States District Court for the Middle District of Louisiana	28a
APPENDIX C—	
Notice of Judgment of the United States District Court for the Middle District of Louisiana	44a
APPENDIX D—	
United States Fifth Circuit Court of Appeals Denial of Rehearing	46a
APPENDIX E—	
Constitutional and Statutory Provisions	48a
United States Constitution, 14th Amendment, Section 1	48a
Louisiana Constitution:	
Article 7, § 20	49a
Article 7, § 26	49a
Article 8, Preamble	51a
Article 8, § 1	51a
Article 8, § 13	51a
Article 8, § 13(B) as amended December 23, 1987	53a
Louisiana Revised Statutes:	
R.S. 17:7(2)	54a
R.S. 17:97.1	55a
R.S. 17:421.3	55a

TABLE OF CONTENTS—Continued

APPENDIX F— Page

Excerpts from the *135th Annual Financial and Statistical Report, 1983-84 Session, Bulletin 1492,* Louisiana Department of Education, pp. 43-44..... 59a

APPENDIX G—

Excerpts from the *135th Annual Financial and Statistical Report, 1983-84 Session, Bulletin 1472,* Louisiana Department of Education, pp. 186, 206, 246 and 278 ..... 60a

APPENDIX H—

Newspaper Article *State-Times,* Monday, August 24, 1987 ..... 61a

APPENDIX I—

Comparative Parish Statistics and Ranking 65a

APPENDIX A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 86-3470

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LA., ETC., *et al.*,
Plaintiffs-Appellants,

v.

LOUISIANA STATE BOARD OF ELEMENTARY & SECONDARY EDUCATION, ETC., *et al.*,
Defendants-Appellees.

Oct. 22, 1987

Appeal from the United States District Court
for the Middle District of Louisiana

Before GARWOOD, JOLLY, and HILL,* Circuit Judges.

GARWOOD, Circuit Judge:

Plaintiffs-appellants Livingston and Grant Parish School Boards, their individual members, and schoolchildren and their parents who reside in those parishes (col-

---

* Judge Hill concurred in the above opinion before his death on October 19, 1987.

lectively, the plaintiffs) brought this 42 U.S.C. § 1983 suit attacking the Louisiana system of financing public education. Named as defendants were the members of the Louisiana State Board of Elementary and Secondary Education (BESE), the treasurer of the State of Louisiana, and the state's legislative auditor, Upon submission of cross-motions for summary judment, the district court dismissed the plaintiffs' suit with prejudice. The plaintiffs appeal that judgment, claiming that the state's system of financing public education violates the equal protection clause of the Fourteenth Amendment. Finding no constitutional violation, we affirm the district court's dismissal.

Facts and Proceedings Below

Louisiana's elementary and secondary public school system is financed by a combination of federal, state, and local funding. During the 1983-84 school year, the last year for which complete figures were available when the record below was completed, federal revenues constituted 9.8 percent of all funds spent, state revenues represented 53.4 percent, and local revenues contributed 36.8 percent. The major (but not the sole) source of the state's contribution is the Minimum Foundation Program (MFP), the stated purpose of which is to provide funds sufficient to ensure an adequate minimum foundation program of education in all public schools in the state.[1]

Pursuant to the state constitution, the BESE administers the MFP. To implement the program, the BESE

---

[1] The MFP is currently mandated by article 8, section 13(B), of the Louisiana Constitution, which provides:

> "(B) Minimum Foundation Program. The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools. The funds appropriated shall be equitably allocated to parish and city school systems according to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation."

adopts a formula each year by which the MFP funds are to be allocated to each of Louisiana's sixty-six parish and city school systems.[2] The legislature must then approve the formula before appropriating funds for the MFP. For the last several years, the BESE has proposed, and the Louisiana legislature has adopted, essentially the same formula. *See* Appendix A for the 1983-84 version of this formula. As in previous years, the 1983-84 MFP formula contains a "cost-side" and a "supply-side." The cost-side establishes the minimum cost of providing each of the services funded under the MFP:. The supply-side of the formula calculates the respective contributions of the state and the local school districts, on a district-by-district basis.

Pursuant to the cost-side of the MFP formula, the cost of funding the MFP is calculated essentially on the basis of student membership (per capita basis). The formula allocates to local school boards funds to provide at least one teacher for every tweny-five students, as well as funding for other support personnel including principals, assistant principals, instructional supervisors, visiting teachers, and social workers. *See* Appendix A; *see also* La. Rev. Stat. Ann. § 17:7 (West 1982 & Supp. 1987). Sabbatical and sick leave pay, injured and unemployed workers' compensation costs, utilities, insurance, and materials and supplies are also provided for, with the funds distributed on the basis of student membership. The MFP also funds a "special education program," which provides salaries for teachers and other

---

[2] There are sixty-six school districts in Louisiana. If these, sixty-four are co-extensive with the state's sixty-four parishes. The other two represent separately the public schools for the cities of Monroe and Bogalusa. Each school district is governed by a corresponding parish or city school board. For ease of discussion, "parish," "school district," and "school board" will be used interchangeably in this opinion.

personnel.[3] The state, supplying funds from its general revenues, finances approximately ninety-four percent of the MFP, and the school districts in the aggregate are responsible for the remaining six percent.

The six percent aggregate local contribution is apportioned among districts in a manner designed to ameliorate, in part, the differences in each district's relative tax-paying ability. To achieve its partial equalizing effect, the MFP formula assumes that each local school board has passed and collected a uniform ad valorem property tax of five and a half mills of the currently assessed value of all taxable property in that district.[4] The sum that such a tax would yield is then deducted from the cost of providing the MFP services for a given district, and the remainder represents the state's MFP contribution to that district.

Local school districts finance their share of MFP costs, along with supplemental funding for the schools within the district, with revenues from locally imposed property and sales and use taxes, from sixteenth-section lands,[5]

---

[3] In addition to the MFP, the state separately provides free school books for all schoolchildren, *see* La. Const. art. 8, § 13(A); La.Rev.Stat.Ann. § 17:351 (West 1982), free school lunches to needy children, *see id.* §§ 17:191-:199 (West 1982), and a teachers' retirement fund, *see id.* §§ 17:571-:764 (West 1982 & Supp. 1987). No complaint is made respecting these items.

[4] The equalizing factor in the MFP formula excludes property that is exempt from taxation due to Louisiana's constitutionally mandated homestead exemption. *See* La. Const. art. 7, § 20; *see also* note 10 and Appendix A, *infra*.

[5] Sixteenth-section lands are lands that were donated by the United States Congress to Louisiana and other states, or localities within them, for support of public education. Before Louisiana was granted statehood, the lands located in what was contemplated to and did soon become the State of Louisiana were reserved by Congress for the support of schools within the township in which each sixteenth-section was located. *See* Act of Apr. 21, 1806, ch. 39, § 11, 2 Stat. 391, 394; Act of Mar. 3, 1811, ch. 46, § 4, 2 Stat. 662,

and from local bond issuances. Article 8, section 13(C), of the Louisiana Constitution authorizes each local school board [6] to levy annually an ad valorem tax not to exceed five mills per dollar of taxable property within the district. The state constitution also permits any school district to levy a special ad valorem property tax for the support of schools when authorized by vote of a majority of electors in the district. *See* La. Const. art. 8, § 13(C); *id.* art. 6, § 32. Neither the constitution nor the legislature has limited the rate or amount of special property

---

663; *see also* J. Madden, *Federal and State Lands in Louisiana* Ch. 16 (1975). Upon its admission to the Union as a state in 1812, title to the sixteenth-section lands in Louisiana passed from the United States to the state "for the support of schools in the [respective] townships." *State of Louisiana v. William T. Joyce Co.*, 261 F. 128, 131 (5th Cir. 1919), *cert. denied*, 253 U.S. 484, 40 S.Ct. 481, 64 L.Ed. 1024 (1920); J. Madden, *supra*, at 234-35. Subsequently, in Louisiana most of these lands were sold by the state to parish school boards of the parishes in which the land was located to be used for educational purposes. *Cacioppo v. Tangipahoa Parish School Bd.*, 404 So.2d 945, 946 (La. 1981); La.Rev.Stat.Ann. § 41:631 (West 1965); *see also J. Madden, supra*, at 246-54. Apparently, some school districts obtain substantial revenues from leasing the mineral rights to these lands, while other districts obtain none because the sixteenth-section lands within the latter districts are either valueless or were sold long ago for nominal sums. Comment, *Inequality in Louisiana Public School Finance: Should Educational Quality Depend on a Student's School District Residency*, 60 Tul.L.Rev. 1269, 1271-72 (1986) (authored by Douglas McKeige); *see also* Proceedings of the 1974 Louisiana Constitutional Convention, 87th Day's Proceedings—Nov. 16, 1973, at 2448-50; *id.* 88th Day's Proceedings—Nov. 17, 1973, at 2456-61.

Plaintiffs state in their brief to this Court that "[r]evenues from the mineral lease of the 16th section and other school lands do not represent a high proportion of total local revenues for the state as a whole. (Since 1966-67, these revenues have comprised less than 3% of the total)."

[6] The state constitution makes an exception in the case of the Orleans Parish School Board, allowing it to levy local ad valorem property taxes up to thirteen mills without obtaining voter authorization. *See* La. Const. art. 8, § 13(C).

taxes that the local electorate may authorize a school district to levy.[7] With voter approval, local school boards may also levy a sales and use tax of up to four percent of revenues derived from personal property and services sold within the district.[8]

In addition, local school boards may finance their contribution to public education within their district with any funds the school board receives from the state's "revenue sharing fund." In its current form, the mandate to create the revenue-sharing fund is set forth in article 7, section 26 of the Louisiana Constitution.[9] This provi-

---

[7] *See* La. Const. art. 6, § 32, art. 8, § 13; La.Rev.Stat.Ann. § 39:703 (West 1968); *see also Howe v. DeSoto Parish School Bd.*, 373 So.2d 248, 251 (La.App.2d Cir. 1979). All property exempt from state taxation under Louisiana's homestead exemption, however, is also exempt from these local ad valorem property taxes. La. Const. art. 7, 20 (West Supp. 1987); La.Rev.Stat.Ann. § 47:1703 (West Supp. 1987).

[8] Article 6, section 29, of the Louisiana Constitution expressly authorizes this sales and use tax for up to three percent, and permits the legislature to authorize additional amounts. The legislature has authorized the school boards to levy an additional sales tax at a rate not to exceed one percent to provide funds for payment of teacher salaries and operation of public elementary and secondary schools in the parish. La.Rev.Stat.Ann. § 33:2737 (West 1966 & Supp. 1987).

[9] In relevant part, this section provides:

> "Section 26. (A) Creation of Fund. The Revenue Sharing Fund is created as a special fund in the state treasury.
>
> "(B) Annual Allocation. The sum of ninety million dollars is allocated annually from the state general fund to the revenue sharing fund. The legislature may appropriate additional sums to the fund.
>
> "(C) Distribution Formula. The revenue sharing fund shall be distributed annually as provided by law solely on the basis of population and number of homesteads in each parish in proportion to population and the number of homesteads throughout the state. Unless otherwise provided by law, population statistics of the last federal decennial census shall be utilized for

sion establishes an annual $90,000,000 fund to be created as a special fund in the state treasury, and to be distributed to parishes according to a legislatively derived formula. The stated purpose of the fund is to offset losses incurred due to Louisiana's constitutionally prescribed homestead exemption from state and local ad valorem property taxes.[10] Revenue-sharing funds must be distributed to each parish on the basis of the relative population of the parish (eighty percent of the fund) and the ratio of number of homesteads in the parish to

---

this purpose. After deductions in each parish for retirement systems and commissions as authorized by law, the remaining funds, to the extent available, shall be distributed by first priority to the tax recipient bodies within the parish, as defined by law, to offset current losses because of homestead exemptions granted in this Article. Any balance remaining in a parish distribution shall be allocated to the municipalities and tax recipient bodies within each parish as provided by law."

The current revenue-sharing fund is the successor to the "property tax relief fund," which was established by amendment to the 1921 Louisiana Constitution. *See* La. Const. of 1921, art. X, § 4, ¶ 9(a); *see also Levy v. Parker*, 346 F.Supp. 897, 899 (E.D.La. 1972), *aff'd*, 411 U.S. 978, 93 S.Ct. 2266, 36 L.Ed.2d 955 (1973). Like the revenue-sharing fund, the property tax relief fund was designed to reimburse local governments for revenues lost due to the state's property tax homestead exemption. Because Louisiana then lacked a uniform system for assessment of property subject to ad valorem taxation, and because disbursement of the fund was based on that assessment, in 1972 the legislature's distribution formula for the property tax relief fund was declared unconstitutional under the equal protection clause of the Fourteenth Amendment. *See Levy*, 346 F.Supp. at 903-05. In response to *Levy*, the Louisiana Constitution was amended to replace the property tax relief fund with the revenue-sharing fund. *See* La. Const. of 1921, art. X, § 10B (added by Acts 1972, Ex. Sess., No. 18, adopted Nov. 7, 1972).

[10] Louisiana's homestead exemption is set forth in article 7, section 20, of the state constitution. It currently exempts homestead owners from the first $7,500 of property taxes, which at the current ten percent rate of state ad valorem property taxes, *see* La. Const. art. 7, § 18, means that the first $75,000 in assessed value of a homestead is not taxed.

the total number of homesteads throughout the state (twenty percent of the fund). La. Const. art. 7, § 26(C); *see also* 1984 La. Acts No. 946, § 3.[11]

According to the legislature's formula, the revenue-sharing funds are then distributed to a number of tax recipient bodies within the parishes, including school boards. *See, e.g.*, 1984 La. Acts No. 946. Any funds remaining after disbursement according to this formula are further allocated to eligible tax recipient bodies and municipalities. In parishes having a high percentage of property to which the homestead exemption applies, there are no "excesses" for further distribution, and in many cases, the funds allocated to a parish do not totally reimburse each of the tax recipient bodies for the full amount of revenues lost by virtue of the homestead exemption. Thus, in some parishes, the school board receives revenue-sharing funds sufficient to replace all the property tax revenues that cannot be collected due to the homestead exemption, as well as additional monies from "excess" state revenue-sharing funds. In other parishes, however, amounts lost by virtue of the homestead exemption are not completely reimbursed and no excess funds are available for further distribuiton to the school board. In 1984, the last year for which data was introduced into the record, the parishes of the plaintiff school boards were among thirty-eight parishes that were incompletely

[11] The actual extent to which a parish, or any of the tax recipient bodies within the parish, is unable to collect property taxes due to the homestead exemption thus does not directly affect the amount of revenue-sharing funds it receives. This independence was deliberately created by amendment to the state constitution following the *Levy* decision, *see* note 9, *supra*, which had held that the state's prior homestead exemption reimbursement scheme, which did directly relate the two, was unconstitutional. *See also Drewett v. Louisiana*, 334 So.2d 443, 445-46 (La.App. 1st Cir.), *writ denied*, 338 So.2d 288 (La. 1976) ("[W]rit denied. The judgment of the court of appeal is correct."), *appeal dismissed for want of a substantial federal question*, 430 U.S. 912, 97 S.Ct. 1322, 51 L.Ed.2d 590 (1977).

reimbursed for property tax revenues uncollectable due to the homestead exemption.

On May 31, 1985, the plaintiffs filed this suit for declaratory and injunctive relief against the BESE, its individual members in their official capacities, the state treasurer, and the state's legislative auditor. The complaint asserted a cause of action under 42 U.S.C. § 1983 and invoked federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4). Initially, the plaintiffs alleged that Louisiana's system of financing its public elementary and secondary schools violated the equal protection clause of the Fourteenth Amendment, the privileges and immunities clause of article IV of the United States Constitution, and article 7, section 26, of the Louisiana Constitution. Subsequently, they amended their complaint to delete the claimed violations of the Louisiana Constitution.

The parties submitted cross-motions for summary judgment. The plaintiffs also moved for preliminary certification of a class of similarly situated persons, but the district court continued that motion pending its resolution of the summary judgment motions. Following submission of memoranda and oral argument by the various parties, the district court eventually granted summary judgments in favor of all of the defendants, dismissing the plaintiffs' suit with prejudice. The plaintiffs then brought this appeal.

Discussion

On appeal the plaintiffs raise only the issue whether Louisiana's system of public school financing denies them equal protection. They first argue that the supply-side of the MFP formula, which reduces the state's contribution to each parish by the amount of revenues that would be generated by a locally imposed five and a half mills tax on that parish's taxable property, has an "arbitrary, rather than [an] equalizing," effect. Furthermore, the

plaintiffs contend, because disparities exist in the amount of revenues available to parishes for support of public schools, and because part of that disparity is a result of the means authorized by the state for localities to generate school support revenues, the state must distribute MFP funds on the basis of "relative need," rather than according to its current, predominantly per capita basis. Finally, the plaintiffs also claim that the legislature's formula for distribution of the $90,000,000 revenue-sharing fund unlawfully discriminates against parishes having a large percentage of property subject to the homestead exemption by arbitrarily providing the school boards in those parishes less state funds for school support.

I. Standard of Review

Our standard for testing the plaintiffs' equal protection challenges to Louisiana's system of funding public school education hinges upon the nature of the rights affected by the classification scheme at issue here. This is not a case where the state has failed to provide schoolchildren in the plaintiff parishes with a minimally adequate education. Although the plaintiffs so complain on appeal, they made no attempt to prove before the district court that any child received an inadequate education. Furthermore, the record contains no evidence whatever that any Louisiana schoolchild was deprived of a minimally adequate education because of insufficient funds.[12] Consequently, the classifications challenged in this case are not entitled to any heightened scrutiny under the equal protection clause based upon any theory—the abstract validity of which we do not address—either of wealth being a suspect classification or of education being a fundamental right. *See Papasan v. Allain*, ——

[12] Although the district court decided the case on summary judgment, the parties conceded that all the relevant facts were before the court.

U.S. ——, 106 S.Ct. 2932, 2943-45, 92 L.Ed.2d 209 (1986).

Instead, the funding disparities attacked by the plaintiffs are properly analyzed under the so-called rational basis standard. *See San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 1300, 36 L.Ed.2d 16 (1973); *accord Papasan*, 106 S.Ct. at 2945. Under this standard the state's school financing scheme will withstand equal protection clause scrutiny if it rationally furthers a legitimate state purpose or interest. *Rodriguez*, 93 S.Ct. at 1308. In a rational basis analysis, we presume the constitutionality under the federal constitution of state-authorized discriminations. We require the parties challenging the state's judgment to show either that the state had no constitutionally valid purpose for developing the classifications at issue, or that the state could not reasonably have concluded that the allegedly unlawful classifications were rationally related to such a purpose. *See, e.g., New Orleans v. Dukes*, 427 U.S. 297, 96 S.Ct. 2513, 2517-18, 49 L.Ed.2d 511 (1976).

II. Application to Facts

Applying the rational basis test to the plaintiffs' challenges to Louisiana's school financing system, we conclude that the plaintiffs have failed to meet their burden of proving that the state's scheme violates their Fourteenth Amendment right to equal protection of the laws.[13]

---

[13] We express no opinion about whether the Louisiana system of public school financing comports with the state constitution. *See* Comment, *Inequality in Louisiana Public School Finance: Should Educational Quality Depend on a Student's School District Residency*, 60 Tul.L.Rev. 1269 (1986). This Comment, though it states that "[i]f rational basis review is applied ,the system would most likely be found constitutional," *id.* at 1293, nevertheless argues that, particularly in view of the preamble to the education clause of the Louisiana Constitution and the provision of its article 8, section 13(B) that MFP funds "be equitably allocated" (*see* note 1, *supra*), a more searching standard of review should be applied under which

A. *Equalization*

First, despite the plaintiffs' argument to the contrary, we conclude that the BESE "equalization factor" is rationally related to its stated purpose of tending to equalize local school district contribution to the MFP according to each district's wealth. As noted, the "cost-side" of the MFP formula calculates for each district the total cost of providing every student in that district the educational services—such as one teacher per twenty-five students and appropriate numbers of other personnel, special education costs, utilities, supplies, insurance, and the like—which the program contemplates every district and student having. The state pays to each district an amount equal to this entire cost in that district *less* what that district could raise by a uniform ad valorem property tax of five and a half mills of the currently assessed value of all *taxable* property in the district.[14] Thus, dis-

---

the system could properly, and should, be found contrary to the state constitution. *Id.* at 1294-97. However, after observing that "[t]he [Louisiana] constitution's ambiguity allows a judicial interpretation at either extreme," the Comment suggests (with what seems to be disapproval) that "[t]he most likely result" is that the "Louisiana Supreme Court would uphold the system." *Id.* at 1297.

Although the plaintiffs initially alleged state constitutional violations, they amended their complaint to delete those claims. On appeal, however, the plaintiffs raise a number of arguments going to the claimed failure of the state legislature's distribution formulas for the MFP and the revenue-sharing fund to comport with various provisions of the Louisiana Constitution. Even if these arguments were otherwise properly before this Court, which they are not, we could not address them. Since Louisiana has not waived its Eleventh Amendment immunity, federal courts lack jurisdiction to decide pendent state law claims for prospective, injunctive relief against the state or its state officials. *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 104 S.Ct. 900, 906-20, 79 L.Ed.2d 67 (1984); *Sims v. Jefferson Downs Racing Ass'n*, 778 F.2d 1068, 1074 (5th Cir. 1985). Consequently, in this appeal, we will ignore any arguments made by the plaintiffs that the state's school financing system violates the Louisiana Constitution.

[14] We observe that plaintiffs have expressly disclaimed any argument based on an assertion that the assessed values used are not a

tricts with more taxable property pay a higher percentage of the cost of the MFP within the district, and the state pays a lesser percent. Districts with a high percentage of their total property in tax exempt homesteads are helped by this formula because only taxable property is used to calculate the amount generated by the hypothetical local tax, which amount serves to reduce the portion of the MFP cost in that district borne by the state. Accordingly, the formula tends to favor districts which are "poorer" in terms of *taxable* property values.

We observe that the MFP *cost* formula is just that, namely, an attempt to measure the cost in each district of providing the same educational services to each student. This is because special factors in some districts—such as economy of scale, concentrations of special education students, or the like [15]—may render it less expensive, on a per student basis, to provide the same services as are provided in other districts. In other words, what is uniform in this side of the MFP is the services to be provided per student, not the dollar cost per student. Thus, for example, the record reflects that in 1983-84 the total cost per student of the MFP contemplated educational services was $1,385 per student in Cameron Parish and $1,075 per student in Livingston Parish, though the services covered by the MFP were the same in each parish. This doubtless resulted, at least in substantial part, from differing economics of scale, as Livingston Parish had some 15,583 students and Cameron Parish only 2,150.[16] We do not understand plaintiffs to

---

sufficiently uniform percentage of market value; at two places in their brief to this Court, plaintiffs state that "[u]nequal assessment ratios are not involved in the present case."

[15] But these special factors do not, as we understand it, include different unit costing—*i.e.*, similar level teachers' salaries are costed uniformly per teacher.

[16] The 1983-84 total MFP cost per parish and the portion thereof borne by the state and by the parish, respectively, under the MFP

have attacked the MFP *total cost* formula below. That is to say, plaintiffs did not assert, and the record does not demonstrate, that there would be any material inequality if the state paid the entire MFP (instead of ninety-four percent of it) and no other funds (or nonfederal funds) were spent on public school education. Accordingly, as to the MFP, the relevant comparison between parishes is not the state MFP dollar contribution per student in each, but rather the percentage of the total MFP cost per student which the state bears in each parish respectively.

Throughout this litigation, plaintiffs have sought to compare the Livingston Parish school district with that of Cameron Parish, which is by far the most affluent district in the state. For 1983-84, the total per pupil educational expenditure from all sources was $1,892 in Livingston Parish, the lowest in the state, compared with $6,099 in Cameron Parish, the highest in the state.[17] However, of the total MFP cost per student in Cameron Parish, the state contributed 77.08 percent and Cameron

---

are shown by Table III of Exhibit 21 (Tab 25 to appellants' record excerpts) (we have ignored that year's 2.575425 percent across-the-board reduction in state contribution due to a funding shortfall, as well as that year's increase in state contribution in respect to the school lunch personnel salaries; it is not contended that these items are significant, and they, or at least the former, appear to be extraneous to the normal workings of the MFP formula). The 1983-84 student population figures are from Exhibit 11 (this also shows the total educational expenditures—not just the state and local share of the MFP—per student, per parish).

[17] We observe that little Cameron Parish is (as a result of its sixteenth-section income) really an anomaly in respect to its total educational expenditures per student. The next two highest parishes in terms of overall total per student expenditures are West Feliciana (1,394 students, $3,649 total per student) and Pointe Coupee (3,785 students, $3,229 total per student). The two parishes with the lowest total educational expenditures per student, after Livingston, are Vernon (12,182 students, $2,041 total per student) and Evangeline (7,389 students, $2,144 total per student).

Parish contributed 22.92 percent, while in Livingston Parish the state contributed 98.43 percent of the total MFP cost per student and Livingston Parish contributed only 1.57 percent. The state's bearing a much higher percentage of the total MFP cost per student in Livingston Parish than in Cameron Parish results from the Cameron Parish assessed value of taxable property per student ($59,700) being much higher than that of Livingston Parish ($3,333, the next to lowest in the state).[18]

Based on the 1983-84 data submitted by the parties, it clearly appears that the local districts with less value per student of taxable property contribute a smaller fraction of their per student MFP cost than do the districts having higher values per student of taxable property, with the state contributing a correspondingly higher fraction of the MFP cost in the former districts. Thus, while the supply side of the BESE equalization formula produces a local contribution that may reflect relative school district wealth less than if it also accounted for interdistrict differences in sales tax, bond, and sixteenth-section land revenues, the formula is not without some substantial equalizing effect. We find that the MFP formula's equalization factor does not violate the equal protection clause. *See Rodriguez*, 93 S.Ct. at 1286.

---

[18] Similarly, in Grant Parish, where per student total expenditures from all sources were $2,187 and taxable assessed value per student was $4,492, the state contributed 98.23 percent of the total MFP cost per student in the parish, and Grant Parish contributed only 1.77 percent thereof.

The percentages of total MFP cost per student paid by the local parish in the other parishes mentioned in note 17, *supra*, were as follows: West Feliciana (8.01 percent); Pointe Coupee (7.95 percent); Vernon (1.55 percent); Evangeline (3.46 percent).

The MFP and total expenditure figures are for 1983-84 and are computed from the sources and by the means indicated in note 16, *supra*; the assessed taxable value figures are for 1984-85 and are from Exhibit 4A (Tab 4 to appellants' record excerpts).

B. *Distribution of the MFP Funds*

Likewise, we do not find any equal protection violation as a result of the state's allocation of funds pursuant to the MFP. Under the MFP, funds are allotted to each school district according to the cost-side of the BESE formula. *See* Appendix A. The formula distributes funds on essentially a per capita cost of equal service basis. It determines teacher and other personnel costs, as well as costs of materials and utilities, on the basis of student membership. Of the numerous expenses funded under the program, only transportation costs are determined on the basis of actual cost rather than on a per student basis.

As noted above, the Louisiana legislature has authorized the school boards to generate revenues not only by levying local ad valorem property taxes, but also by imposing a local sales and use tax and by issuing bonds. In addition, some school boards are able to obtain funds from revenues derived from sixteenth-section lands owned by their parish and/or from their allocation of revenue-sharing funds. The plaintiffs complain that by authorizing local sales taxes and bond issuances and by then failing to account for these "state-fostered" revenue sources and for revenues from sixteenth-section lands owned by local districts [19] in calculating the cost of fund-

---

[19] In contrast to *Papasan v. Allain*, —— U.S. ——, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986), which focused entirely upon Mississippi's distribution of funds derived from sixteenth-section lands owned by the state, the plaintiffs in this case do not directly challenge the state's historical or present administration of sixteenth-section lands at all—either sixteenth-section lands now owned by parishes or lands Louisiana owns. *See* note 5, *supra*. Unlike the situation in *Papansa*, 106 S.Ct. at 2946-47 & n. 18, the plaintiffs here do not ask that each parish be treated the same because the source of the funds in question is the federal government. Nor do they assert that the sixteenth-section lands in Louisiana are state-owned lands whose revenues must be used equally throughout the state. Instead, the plaintiffs merely claim that the state's failure to reduce the

ing public education, the state has acted to create inequalities among school districts in the amount of revenues available for school support.

The plaintiffs do not directly challenge the propriety of the state's chosen means of allowing local school districts to finance education at the local level. Instead, they argue that the equal protection clause requires the state, through the BESE formula, to calculate educational costs in a manner that takes fully into account substantially all of the sources of interdistrict disparities in local funding ability rather than on a predominantly per capita, across-the-board basis. Alternatively, they contend, to pass constitutional muster, the formula must offset the disparities in local funding ability by taking substantially all such disparities into account in determining the amount of each parish's contribution to the MFP. Thus, according to the plaintiffs, by allocating MFP funds on essentially a per capita basis and by equalizing local contribution only by the assumed five and a half mills property tax, the MFP formula results in a state-fostered net inequality among parishes in available public school funding that violates the equal protection clause.

To the extent that we understand it, we find this argument unpersuasive. The district court found that Louisiana's MFP reflected two competing legitimate state goals, that of assuring each child in the state an opportunity for a basic education on an equal basis and of permitting and maintaining some measure of local autonomy over public education. We concur with the district court that Louisiana's allocation of MFP funds is responsive to these

---

amount of state funds contributed to each parish under the MFP formula by the total amount of local revenues (including revenues from sixteenth-section lands owned by a parish) available to the parish for school support is impermissibly discriminatory. Consequently, the present appeal does not raise the issue, presented in *Papasan*, of the constitutionality of the state's distribution of funds derived from state-owned sixteenth-section lands.

two goals. The program provides basic educational requirements on an equal basis throughout the state by allocating funds on the basis of student membership; yet, by not cancelling out all disparities in local revenues available for school support, the program also gives local school districts encouragement and flexibility to supplement state funds. It is plain that the state's public school educational financing does not enhance, but rather materially diminishes, the inequalities in educational services which would exist between parishes if the state provided no such support and spent the funds in question for other purposes.

It may be true, as the plaintiffs urge, that the failure of Louisiana's school financing system to ameliorate all differences in local district wealth serves as a disincentive in some poorer parishes to tax more heavily in order to make up for these differences. Nevertheless, the system cannot be condemned because it imperfectly and incompletely effectuates the state's goals. *Rodriguez*, 93 S.Ct. at 1306; *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491 (1970). Moreover, as long as the state's means of achieving its objective is not so irrational as to be invidiously discriminatory, the financing scheme does not fail merely because other methods of serving these goals exist that would result in smaller interdistrict disparities in school support expenditures. At least where, as here, no suspect class or fundamental right is involved, the equal protection clause "does not require absolute equality or precisely equal advantages." *Rodriguez*, 93 S.Ct. at 1291. We find that the program's formula is rationally related to the MFP's goals of providing each child in each school district with certain basic educational necessities and of encouraging local governments to provide additional educational support on a local level, to the extent that they choose to and are financially able to do so. We therefore reject the plaintiffs' challenge to the MFP formula's method of allocating funds and determining local contribution.

C. *Revenue-Sharing Fund*

Finally, we also reject the plaintiffs' attack on Louisiana's revenue-sharing fund. The plaintiffs assert that the fund is unconstitutional because the revenue-sharing distribution formula fails to fully reimburse school boards in parishes having a disproportionately high percentage of property subject to the homestead exemption for the property tax revenues those school boards lose by operation of the homestead exemption. According to the plaintiffs, the legislature's formula for distribution of the state's revenue-sharing fund is not rationally related to its stated purpose of offsetting losses incurred by virtue of the homestead exemption.

We disagree. While the distribution formula does not always directly reimburse local school boards for every dollar of property tax the school boards cannot collect due to the homestead exemption, the "80% per capita, 20% per household" method of distributing the revenue-sharing fund is a rational one. It is not unreasonable for the state to suppose, as this formula does, that parishes with larger concentrations of population and homesteads will generally lose more property tax revenues due to the homestead exemption than will less populous parishes. Rough accommodations are constitutionally permissible, even where not wholly logical or scientific. *See U.S. R.R. Retirement Board v. Fritz*, 449 U.S. 166, 101 S.Ct. 453, 459, 66 L.Ed.2d 368 (1980). Within each parish, the fund supplements resources available to a host of tax recipient bodies, not just school boards. The distribution of funds within the parishes recognizes the impact of the homestead exemption upon the local tax recipient bodies by proportioning the funds according to amounts lost.[20] The revenue-sharing fund distribution

---

[20] The distribution formula enacted by the legislature for 1984, *see* 1984 La.Acts No. 946, which is apparently substantially the same as the formulas used for several preceding years, directs that

formula is deliberately independent of the direct property tax revenue loss from the homestead exemption on a parish-by-parish basis because historical attempts at direct reimbursement on this basis resulted in deliberate manipulation of homestead exemption losses by some parishes. *See Levy v. Parker*, 346 F. Supp. 897 (E.D. La. 1972), *aff'd*, 411 U.S. 978, 93 S.Ct. 2266, 36 L.Ed.2d 955 (1973); *see also* note 9, *supra*. Furthermore, while the distribution formula disadvantages school boards in parishes with a high percentage of homestead exempt property by not fully reimbursing their loss of property tax revenues, the homestead exemption itself counteracts that loss to some extent by providing residents in those parishes with saved property tax dollars that can be used to stimulate the local economy, ease the burden of local sales taxes, and support local education in other ways. In sum, therefore, the state's homestead exemption and

---

within-parish distribution of the revenue-sharing fund be made only to "eligible" tax recipient bodies. The legislature has defined eligible tax recipient bodies to include only bodies that were eligible for reimbursement from the property tax relief fund prior to its abolition, *id.* § 1(a)(1), plus some specifically designated other local tax recipient bodies. *Id.* § 1(a)(4). The plaintiffs also argue that the legislature's determination of which local bodies are eligible to receive revenue-sharing funds furthers no legitimate state goal; they contend that it serves only to cut off school boards from full reimbursement for "venal political reasons," namely, to preserve the funds for local governmental activities that are more popular than education. The state counters, persuasively, that its designation of eligible intraparish tax recipient bodies is designed to prevent "internecine warfare among the various political bodies in a parish" and that this is a valid state goal. We think the state has a legitimate interest in maintaining political harmony among local governmental bodies. By distributing the revenue-sharing funds on a per capita, per household basis to each parish, and to eligible tax recipient bodies within parishes, the legislature is able to offset homestead exemption losses while simultaneously avoiding intraparish battles about how the funds will be distributed. We therefore reject the plaintiffs' equal protection challenge to the revenue-sharing fund distribution formula on this ground.

revenue-sharing fund reimbursement system involves a balancing of historical and economic factors that is reasonably related to the state's valid objectives of relieving poorer homeowners of the burdens of property taxation, *see Levy*, 346 F. Supp. at 899, and of partially reimbursing local governments for losses resulting from the exemption. Consequently, as with the other components of Louisiana's school financing system challenged in this lawsuit, we find no equal protection violation in the distribution of the state's revenue-sharing fund.[21]

Conclusion

We conclude that the principles of *Rodriguez* are controlling and mandate affirmance of the district court's judgment. The interparish disparities in total educational expenditures per student appear to be less wide than the Texas interschool district disparities involved in *Rodriguez*, especially laying aside small, aberrational Cameron Parish.[22] In Louisiana, the total state contribu-

---

[21] We also observe that the revenue-sharing fund distribution scheme was upheld against an equal protection attack in *Drewett v. Louisiana*, 334 So.2d 443 (La.App. 1st Cir.), *writ denied*, 338 So.2d 288 (La. 1976) ("The judgment of the court of appeals is correct."), *appeal dismissed for want of a substantial question*, 430 U.S. 912, 97 S.Ct. 1322, 51 L.Ed.2d 590 (1977). The United States Supreme Court's dismissal is a judgment on the merits, with precedential value, albeit of a limited and restricted nature. *See Hicks v. Miranda*, 422 U.S. 332, 95 S.Ct. 2281, 2289, 45 L.Ed.2d 223 (1975). We rejected another equal protection challenge, of a somewhat different nature, to an intraparish distribution of the revenue-sharing fund in *Town of Bell v. Rapides Parish Police Jury*, 746 F.2d 1049 (5th Cir. 1984).

[22] We have calculated (from Exhibit 11) that for 1983-84 the average all-source total educational expenditure per student of the seven parishes having the highest figure in this respect was $3,628 per student (eliminating Cameron Parish, the average for the other six was $3,217 per student), and the similar average for the thus measured lowest seven parishes was $2,129. The relative disparity

tion—which has an equalizing influence—represents 53.4 percent of all public school spending, and local revenues account for only 36.8 percent; in *Rodriguez*, the state share was 48 percent and the local share 41.1 percent. *Id.* 93 S.Ct. at 1284 & n.21. Moreover, in Texas, the prime equalization funding mechanism—the Foundation School Program—was eighty percent state funded and 20 percent locally funded, *id.*, while the Louisiana MFP is approximately ninety-four percent state funded. Moreover, certain weathier school districts in Texas netted significantly *more per student* from the Foundation School Program than did significantly poorer districts. *Id.* at 1286. *See also id.* at 1321 (dissenting opinion of Justice Marshall).[23] Texas school districts did not have

---

between these extremes is thus 1.7-to-1 with Cameron Parish included, and 1.5-to-1 without Cameron Parish.

Another standard which may be used to make comparisons between parishes is the percentage which the all-source total educational expenditure per student in a given parish is of the total MFP cost per student in that parish. The average percentage in this respect for the seven parishes with the highest all-source total educational expenditure per student is 255.98 percent (excluding Cameron Parish, the average is 225.25 percent); for the seven parishes with lowest total educational expenditure per student, the average percentage in this respect is 176.78 percent. These figures produce a ratio between the high group average and the low group average of 1.45-to-1; excluding Cameron Parish, the ratio is 1.27-1.

These disparities are not as wide as those indicated in *Rodriguez*. *Id.* 93 S.Ct. at 1286-87 & n. 38 (n. 38 reflects "State & Local Revenue Per Pupil" for the top ten districts, of the 110 districts surveyed, of $815, compared to $305 for the lowest four districts surveyed, and $462 for the forty next to the lowest districts; the resulting ratios are 2.67-to-1, top ten to lowest four, and 1.76-to-1, top ten to forty next to the lowest). *See also id.* at 1321 & n. 38 (dissenting opinion of Justice Marshall, showing, *inter alia*, that for 1970-71 the chosen illustrative districts, Edgewood and Alamo Heights, had total state and local funds per student of $418 and $913, respectively, a 2.18-to-1 ratio).

[23] Of the two illustrative districts, the much wealthier, Alamo Heights, received $491 per student from the state, while the poorer district Edgewood, received only $356 per student (1970-71).

sales tax authority, as Louisiana districts do [24]; and, unlike the situation in Louisiana, Texas limited the rate of local ad valorem taxation. While Louisiana's homestead exemption is significantly higher than Texas' was, nevertheless this is at least partially offset by the Louisiana revenue-sharing fund. Nevertheless, it remains true in Louisiana, as in Texas, that "[t]hose districts that have more property, or more valuable property, have a greater capability for supplementing state funds." *Id.* at 1303. But this is a necessary consequence of reliance on local taxation for local expenditures, and such reliance, despite that consequence, is not unconstitutional. *Id.* at 1307.

We reject the plaintiffs' equal protection challenges to the Louisiana system of funding public school education. Accordingly, we affirm the district court's dismissal of their suit.

AFFIRMED.

---

[24] As previously noted, Louisiana districts can tax local sales and services up to four percent. For the years shown by the record, none taxed above two percent.

APPENDIX

For the 1983-84 school year, the following MFP formula was adopted by the BESE and approved by the Louisiana legislature.

EQUALIZATION FORMULA
1983-84 SCHOOL YEAR—CURRENT BASIS

I. COST OF MINIMUM FOUNDATION PROGRAM (for a full nine-month session, based on membership and other current data at first reporting period 1983-84)

A. Regulation Education

1. Regular Teachers—total number allotted and employed (34,819.5), on the basis of current student membership, at salary according to State Minimum Salary Schedule, the allotment to be the sum of a school-by-school allotment and an allotment on a parishwide basis as follows: $510,988,414

a. School-by-school based on a 25-to-1 pupil-teacher ratio for all grades, with the current allotment table for secondary schools or departments applied to total membership in each school, beginning at the fourth step. (This eliminates for allotment purposes schools with a membership of fewer than 117, except those small high schools located more than ten miles from next high school. In such cases the schools will be alloted one teacher for each secondary grade.)

b. Parishwide basis on sliding scale, beginning with a 200-to-1 pupil-teacher ratio for the first 5,000 student membership; 350-to-1 for the next 5,001 to 10,250; 500-to-1 for the next 10,251 to 25,250; 750-to-1 for the next 25,251 to 50,000; and 1,000-to-1 pupil-teacher ratio for membership over 50,000.

c. In addition to the allotment of teachers in a. and b. above, a supplemental allotment of

teachers shall be made for grades K-3, using the difference between a 24-to-1 pupil-teacher ratio and a 25-to-1 pupil-teacher ratio, to be applied on a parishwide basis to the total membership in grades K-3.

d. Parishwide basis using difference of 20-to-1 and 24-to-1 in K-3 to extent funds were appropriated ($2M) in 1983.

e. Base salary and salary increment for Certified Second Language Specialists in Elementary Grades, Act 714 of 1975 and Senate Concurrent Resolution No. 15 of 1st E.S. 1977.

2. Instructional Supervisors, Visiting Teachers, Social Workers, Principals, Assistant Principals, and other certified or licensed personnal (2,247) —one (1) allotted for each 15 teachers, including special education teachers, allotted and employed for those parishes with fewer than 201 teachers allotted in 1a. and 1b., one (1) allotted for each 18 teachers, including special education teachers, allotted and employed for those parishes allotted 201 to 350 teachers allotted in 1a. and 1b., one (1) allotted for each 20 teachers, including special education teachers, allotted and employed for those parishes allotted more than 350 teachers in 1a. and 1b. (total number allotted and employed at 1 1/3 times actual salary according to the State Minimum Salary Schedule for teachers). The allocation of administrative positions in Item 2 provides that a principal be allotted to each school, and that no parish be allotted fewer administrative positions for the fiscal year 1983-84 than were allotted and employed during the 1982-83 school year ..... $ 49,608,319

3. Transportation—actual cost of approved bus routes (7,511), based on the State Minimum Salary Schedule for bus drivers 109,645,949

4. Sabbatical Leave Pay—one-half of the pay of the State Minimum Salary Schedule for a beginning teacher with a Bachelor's degree multiplied by the actual number (full-time equivalent) on sabbatical leave for the previous years, $5,688 × 806	4,694,875
5. Accumulated Sick Leave Severance Pay (not to exceed 25 days for any employee)—75% of the actual payments for the previous year (to be distributed on the basis of student membership) membership 778,593.5 × $2.259146	1,879,388
6. Workmen's Compensation—75% of the actual payments for the previous year (to be distributed on the basis of student membership) membership 778,593.5 × $5.406043	4,420,897
7. Unemployment Compensation—75% of the actual payments for the previous school year (to be distributed on the basis of student membership) membership 778,593.5 × $1.978865	1,807,598
8. Utilities, Insurance (other than unemployment and workmen's compensation insurance), Materials and Supplies, and Repair and Upkeep of Plant—membership 778,593.5 × $60	46,776,150
9. Salary Adjustments for Other School Employees—salary increases for administrative, clerical, maintenance and custodial employees, and other employees whose salaries are not governed by a State Minimum Salary Schedule. This does not include employees paid from the School Lunch Program, federal programs, etc. (to be distributed on the basis of student membership—cost per student figure established in 1982-83 to remain constant until further increases are granted) membership 778,593.5 × $87,324523	$ 67,909,306
Sub-total	$797,811,896

B. Special Education Program

1. Special Education Teachers—total number allotted and employed (7,255.9) based on pupil teacher ratios contained in Regulations Implementing Act 754 of 1977 multiplied by salary according to State Minimum Salary Schedule for teachers	$ 99,695,549
2. Special Education Supervisors—one for each parish, if employed, 65 at 1 1/3 times salary according to the State Minimum Salary Schedule for teachers	1,442,984
3. Special Education Teacher Aides—number allotted and employed (3,699) based on ratios contained in Regulations for Implementing Act 754 of 1977 multiplied by actual salary, limited to $5,619 per aide	20,784,681
4. Special Education Bus Attendants—actual salary of each approved attendant, limited to $4,233 per bus attendant	2,620,161
5. Pupil Appraisal, Assessment Teachers, and other expenses (744.7) times 1 1/3 State Minimum Salary Schedule for teachers	17,047,604
Sub-total	$141,590,979
Total Cost of Minimum Foundation Program	$939,402,875

II. MEASURE OF LOCAL WEALTH INCLUDED IN SUPPORT OF MINIMUM FOUNDATION PROGRAM

A. Ad Valorem Tax—Gross Yield of 51½ mills of current assessed value of taxable property	
Total Support for Minimum Foundation Program	$ 54,333,600
III. DIFFERNCE NECESSARY TO EQUALIZE	$885,069,275
1. Adjustments, 1982-83 (net due Parishes)	923,316
2. Less Reduction (.02575425)	22,818,075
Reduced Difference to Equalize	$863,174,516

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY: JUNE 9, 1986—PARKER, C.J.

Civil Action No. 85-528-A

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, *et al.*

versus

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, *et al.*

This matter is before the court on cross motions for summary judgment filed by all parties. The court has heard oral argument on the issues, and the matter has been copiously briefed. Summary judgment was granted as to one of the defendants, Mr. Joseph A. Burris, Legislative Auditor of the State of Louisiana, and the remaining motions were taken under submission.

Plaintiffs have invoked the jurisdiction of this court under 28 U.S.C. § 1343, as a matter arising under 42 U.S.C. § 1983. Plaintiffs allege violations of the privileges and immunities and equal protection guarantees of the United States Constitution, Article Four, § 2, and the Fourteenth Amendment, § 1, under color of state law, and thus the court has jurisdiction over the subject matter by virtue of 42 U.S.C. § 1983.

The complaint is filed on behalf of several groups of plaintiffs, generally alleging discrimination in the tax

assessment, exemption, and distribution system presently operating in the state of Louisiana, as it affects the funding of public education. Plaintiffs claim that the system, particularly the Minimum Foundation Program and state annual revenue sharing fund, as supplemented by local revenues, results in gross disparities among local school systems with reference to the total amount of money per pupil which is available for public education. Plaintiffs include the school boards of Livingston and Grant parishes, the individual members of those school boards, citizen taxpayers on behalf of their minor schoolchildren who attend school in those parishes. Plaintiffs have moved for preliminary certification of a class, but action on this motion has been deferred pending resolution of the motions for summary judgment. Plaintiffs seek a declaratory judgment from this court, declaring unconstitutional all state statutes and constitutional provisions regulating distribution of state funds for education, as violations of the Fourteenth Amendment equal protection clause, and further request injunctive relief against any further enforcement of those laws by the defendants.

The undisputed facts of this matter have been stipulated by the parties or appear in exhibits submitted with the motions, the accuracy of which has been admitted or stipulated.

Louisiana funds its public schools through a system of state, local and federal revenues. Section 13(A) of Article 8 of the Louisiana Constitution of 1974 mandates the legislature to appropriate sufficient funds to supply free school books and other materials of instruction. Subsection "B" provides:

> (B) The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools. The funds appropriated shall be equitably allocated to parish and city school systems according

> to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation.

Subsection (C) requires each local school board to annually levy an ad valorem tax not to exceed five mills (thirteen mills in Orleans Parish). For the 1983-84 school years, state revenues constituted 53.4 per cent of all funds spent on public elementary and secondary education; federal revenues represented 9.8 per cent, and the local school district revenues contributed 36.8 per cent. Through the minimum foundation program, local school boards are alloted funds to hire teachers, principals, social workers, etc., based on a uniform ratio of such personnel to a specified number of pupils. Thus, the state funding is principally alloted on the basis of the number of students in each school system. In addition to textbooks and the minimum foundation funds, the state supplies support for local school boards through the provision of transportation costs and lunch programs; this additional support is also basically on a per capita basis.

In an attempt to partially equalize the amounts of monies that will be available to the various local districts (to aid those parishes with lesser property values to be taxed), the minimum foundation formula annually adopted assumes that each local school board has passed and collected a uniform millage tax of 5½ mills on the property in that parish. This sum makes no adjustment for the fact that some property within the parish may not be taxable, as a result of Louisiana's homestead exemption. The sum is based upon the *total* assessed value of property in the local school district, and is deducted from the amount each local school district receives from the state. Those parishes with relatively higher assessed property values thus receive a greater reduction in their funds received under the minimum foundation formula than do those parishes with lesser assessed property

values. This serves to give the district with relatively lower property values more state aid than it would receive if state aid were based exclusively on the number of pupils in the district, and thus works to the advantage of school boards such as those in Livingston and Grant parishes. However, this adjustment is only a partial equalizer, and does not attempt or achieve the complete elimination of disparities among the parishes in the amount of money available per student.

Local school district financing is relied upon to supplement the funding of public education, and this results in varying amounts of funds being spent per student in each parish. Exhibit 6, submitted by plaintiffs, which defendants admit is an accurate reflection of the total amount of funds per student in each parish for years 1957 through 1984, shows that in 1984, the parish spending the least total amount per student was Livingston, with $1892 per child, while the most spent per student was in Cameron, with $6099 per student. Eliminating these two parishes, which represent the high and low extremes, the disparity ranges from $2041 per pupil to $3649 per student. These amounts include money distributed to each parish from the minimum foundation program, as well as those amounts with which each parish supplements its funding from local revenues, such as local sales taxes or in some cases mineral income from sixteen section lands.

Section 26 of Article 7 of the constitution (the successor to the Property Tax Relief Fund) establishes an annual $90 million revenue sharing fund which is distributed to tax recipient bodies in each parish, not just school boards, which serves to partially off-set local tax losses caused by the homestead exemption. Revenue sharing funds are distributed to each parish based in part upon the number of residents of that parish (80 percent of the fund) in that parish, according to the latest census data. The legislature annually sets the formula for

this distribution of funds to the parishes based upon population and household data. The extent to which a parish is allegedly not able to collect property taxes because of the homestead exemption has no effect in determining the extent of revenue sharing funds that the parish receives. Any remaining funds, or "excesses," are to be further allocated to tax recipient bodies and municipalities within each parish. In parishes having a high percentage of property to which the homestead exemption applies, there are no "excesses" for further distribution, and in many cases, the revenue sharing distribution to the parish does not totally reimburse the amounts lost to each of the tax recipient bodies by virtue of the homestead exemption. Thus in some parishes, the school board is totally reimbursed for whatever property taxes it loses by virtue of the homestead exemption, and receives additional distributions from "excess" state revenue sharing funds. In other parishes, however, the amounts lost to the homestead exemption are not completely reimbursed and there are no "excess" funds for further distribution to the school board or any other eligible tax recipient body in that parish. Plaintiff's Exhibit 3 shows that in 1984, Livingston and Grant parishes were among thirty-eight parishes which were not totally reimbursed for those losses by the distribution of state revenue sharing funds. The legislature includes in each annual revenue sharing bill a provision which prohibits reimbursement for local ad valorem taxes levied to pay off bond issues.

Based upon these facts, plaintiffs claim that they are entitled to summary judgment as a matter of law, declaring that the system of funding public education in the state of Louisiana denies them the equal protection of the laws. Plaintiffs claim that the minimum foundation formula discriminates against them by:

1. Not taking into account varying levels of local sales tax avails in each parish;

2. Not considering local mineral revenues available to some parish school boards as a result of ownership of the 16th Section land;

3. Not considering variations in local property tax avails, other than the de minimus deduction for an amount equivalent to a 5½ mill tax in each parish;

4. Not considering the amount lost to homestead exemptions within each parish;

5. Not considering the total local taxing "effort" within each parish.

The gravamen of plaintiffs' complaint is that those parishes which already have substantial revenues available to them from alternative sources need less MFP money, and therefore the state should distribute funds on the basis of some formula which would take into consideration the relative need of the parishes, rather than distributing those funds on a predominantly per-capita, across-the-board basis.

With reference to the state revenue sharing funds, plaintiffs claim that the system discriminates against school districts in those parishes in which a large percentage of the property is subject to the homestead exemption, and is thus unavailable for funding public education needs within those parishes. Because bond issues are not payable from state revenue sharing funds and only a portion of school support and maintenance tax "losses" from homestead exemptions are reimbursed, these parishes must impose higher millages in order to properly fund public education, or must settle for a lower quality of education due to insufficient funds. The lack of local resources particularly impacts school building programs and the ability to attract quality teachers through pay incentives. The non-exempt taxpayers among the plaintiffs, who do not own property which qualifies for the homestead exemption, complain also that the state

revenue sharing distribution discriminates against them because they are forced to pay a disproportionate share of local taxes in order to fund public education. Also, these plaintiffs claim that the classification of taxpayers in Article 7, § 18 of the Louisiana Constitution, was amended in 1979 in such a way that the assessment burden was shifted away from commercial and industrial and utility taxpayers and toward non-exempt individual taxpayers.

Plaintiffs claim that this combination of factors results in arbitrary discrimination against them and thus violates their right to equal protection of the laws.

Defendants argue that the same set of facts entitles them to judgment as a matter of law, declaring that the system of taxing powers, exemptions, and distribution of funds does not violate the Fourteenth Amendment, but in fact is rationally related to the state's objective of assisting the local areas in providing an education for all of the state's citizens. The defendants suggest that there is no constitutional obligation to ensure the same level of educational quality for each child or for each school district or for each parish in the state. Rather, the state has allocated its limited resources in such a way that each student is ensured a certain minimum level of education, as established by the guidelines adopted by the Board of Elementary and Secondary Education. The Minimum Foundation Program is just what its name implies, a program designed to provide each child in each school district of each parish with certain basic necessities as a foundation upon which local governments can build to provide additional educational advantages on a local level, if they choose to do so and are financially able to do so. The 5½ mill adjustment is a recognition (although plaintiffs claim an inadequate one) that not every parish has the same financial resources available to fund public education for its children, and thus the formula is adjusted slightly to take these differing re-

sources into consideration. However laudible it may be to seek the best education that money can buy for each child, that is not the goal of the minimum foundation formula. Its goal is to ensure that every child has equal access to an adequate education, regardless of where he resides, but that this education can be augmented in accordance with local priorities and under local control. The system thus effectuates a balance, of sorts, between state and local control over the funding of public education.

With respect to the annual revenue sharing funds, defendants further note that these additional state funds are distributed to the parishes in an effort to supplement the resources available to those parishes for a variety of public services, including public education. The "per capita, per household" distribution formula is a rational method of distributing these funds, since it is reasonable to suppose that those parishes with the largest population concentrations will shoulder a heavier burden in providing public services. Within each parish, the distribution of these funds recognizes the impact of the homestead exemption upon local tax-recipient bodies by proportioning amounts lost to each of these bodies because of the exemption. The annual revenue sharing fund is deliberately independent from the homestead exemption loss on a parish-by-parish basis, because of the historical experience in the state with such reimbursement attempts, which resulted in deliberate manipulation of the homestead exemption within certain parishes. See *Levy v. Parker*, 346 F.Supp. 897 (E.D. La. 1972), *aff'd* 411 U.S. 978, 93 S.Ct. 2266, 36 L.Ed.2d 955 (1973). Thus, the present system involves a balancing of historical and economic factors to achieve the state's objective of supplementing and partially equalizing education resources with state annual revenue sharing funds. Although the annual revenue sharing distribution includes school districts among the eligible tax-recipient bodies, its function

is broader than just the funding of public education, and includes a wide range of public services. Defendants urge that therefore its relationship to public education must be considered as part of its broader scope, and not in isolation as it impacts the funding of local schools.

This court's review of the jurisprudence leads it to the inexorable conclusion that this matter is virtually indistinguishable from *San Antonio Independent School District v. Rodriguez*, 411 U.S. 163, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). Admittedly, there are some factual dissimilarities between the Texas and Louisiana systems of assessment and distribution of state funds for public education. Yet the two systems share the basic premise that a minimally adequate educational level will be funded by the state to ensure that each child receives the educational necessities, and that beyond this level, local funding can be provided to augment or enhance the public education available to children within each district, to the extent each local district is willing or able to provide such additional funds. This combination of state and local funding of public education, in both the Texas and Louisiana systems, results in substantial disparities among the local school districts in the total amounts available to be spent per child, although the level of state support for each local school system is computed on a basically per pupil basis. Both systems produce, as a consequence, a situation that "wealthier" districts provide more local support for schools and thus generate more revenues and arguably pupils there receive a better quality education than those in "poorer" districts. Notably lacking is any evidence that the amounts per pupil generated in Livingston and Grant parishes is inadequate to properly educate the students or that dollars spent bear any relationship to educational quality.

In examining the equal protection implications of such a system, the initial inquiry must be whether a discrete class of persons is being discriminated against, and

whether this group can be considered a "suspect" class, such that a stricter standard should be applied to the governmental decisions than the "minimum rationality" standard by which economic legislation is generally evaluated. As in *Rodriguez*, plaintiffs herein have not defined a cognizable class of persons who are disadvantaged under the methods of financing public education in Louisiana. The arguments of plaintiffs suggest that the class has several components, including all taxpayers in a parish which has fewer overall taxable resources, because taxes on those few resources must be higher in order to augment state funding; also school children in those "poorer" parishes, who receive fewer of the enhancements which might improve the educational quality in their schools; also school boards in "poorer" parishes, who are forced to labor to provide quality education without the monetary assistance which is available in some other parishes; also, those taxpayers whose property is not eligible for the homestead exemption, who thus bear a greater proportion of whatever property taxes are locally generated to support public education. Clearly all of these persons or groups have an interest in the system which is affected by the complex interrelationships among the various statutes and constitutional provisions which establish and effectuate the funding of public education. However, none of these persons or groups is the type of discrete "suspect" class to which the more stringent equal protection analysis is applicable. As in *Rodriguez*, it is impossible in this case to assign a *single* characteristic which would identify or define the class. Plaintiffs' argument suggest that the system discriminates against residents of rural parishes which cannot generate significant sales tax revenues, which do not have mineral resources from which royalties can be collected, and which have a large proportion of property which is qualified for the homestead exemption. Undoubtedly, some aspects of the present disadvantage of parishes with this combination of characteristics, with reference to the funding

of public education. But unless a particularized segment of society, a "suspect" class, is clearly discriminated against by the system of laws being challenged, the standard by which the system is evaluated under the Fourteenth Amendment is whether the combination of laws is rationally related to some legitimate, articulable state objective.

The observation made by the *Rodriguez* court is equally applicable to the matter before this court:

> However described, it is clear that appellees' suit asks this Court to extend its most exacting scrutiny to review a system that allegedly discriminates against a large, diverse, and amorphous class, unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts. The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.

Rodriguez, supra, at 1294.

The court concluded that the Texas system did not operate to the peculiar disadvantage of any suspect class, and this court must reach the same conclusion with respect to the Louisiana system.

The only other basis upon which this court could find that a more exacting level of scrutiny is required would be if the system impinged upon the exercise of a "fundamental right" under the constitution. This issue has not been strenuously argued before this court, probably because the *Rodriguez* court concluded that there was

> . . . no basis for finding an interference with fundamental rights where only relative differences in

> spending levels are involved and where—as is true in the present case—no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process . . ."

Rodriguez, supra, at 1299.

Since we conclude that plaintiffs have not established the existence of any discrete class affected by the state's system of funding public education, and since no fundamental right is at stake, the economic regulations here challenged will be examined in the light of the "minimum rationality" standards. *McGinnis v. Royster*, 410 U.S. 263, 93 S.Ct. 1055, 35 L.Ed.2d 282 (1973).

Thus analyzed, it is obvious that the same set of circumstances which adversely affects certain parishes with the above-described combination of characteristics in funding public education, works to the advantage of these parishes in other ways. For instance, as defendants have pointed out in brief, the amounts lost to all eligible taxing bodies within a parish with a high percentage of homestead exempt property, are saved by that large percentage of parish residents whose property is within the $75,000 exemption, who can use these saved funds to stimulate the local economies in other ways. Further, those parishes without a significant retail base from which sales taxes can be generated to supplement state funds for public education are the same parishes which contribute less in the way of sales tax revenues to the state's general fund. And it is from the general fund that these parishes are allocated state funds on a per capita per household basis under the annual revenue sharing and on a per student basis under the minimum foundation program. Thus, the same system which may operate unfavorably with respect to distribution of funds for public education can also be said to operate beneficially with respect

to assessment of funds. Simliar observations could be made with references to the Sixteenth Section revenues; those parishes which are rich in minerals historically contribute a substantially greater amount to the state's general fund by way of severance taxes than those parishes without major mineral resources. Yet, the distribution of state funds back to the parishes for public education is basically on a per capita basis, which operates in favor of those parishes who are unable to contribute significant amounts to the general fund from mineral revenues.

As plaintiffs' counsel has pointed out, these countervailing positions were argued and balanced in the debates at the Louisiana Constitutional Convention in 1973, and have been reconsidered, re-examined, and revised since then in subsequent legislative debates. For the purposes of Fourtenth Amendment analysis, these debates serve to inform this court of the delicate balancing process which is the essence of the legislative function and indicates to the court that there are competing rationales underlying the current system. But the fact that there may be more than one rational solution to the problem of financing the state's public education does not make the chosen system, as it presently operates, irrational. Rather, it illustrates that the basic goal of the various constitutional and statutory provisions is to make available sufficient resources so that each child in the state of Louisiana can receive the educational necessities and no child is deprived of the opportunity to go to a school which can provide him with a meaningful education. The methods chosen to accomplish this goal reflect the tension between two other goals, each of which is only partially and imperfectly realized by the Louisiana system of funding public education. On the one hand, there is an attempt to equalize educational opportunity on a statewide basis, and on the other hand, there is an attempt to retain some measure of local autonomy. The system rep-

resents a compromise between these two goals, in that the basic educational requirements are provided through the minimum foundation program on an equal basis throughout the state, yet local areas are given the freedom to supplement state funds. At any given time, one or the other of these goals might dominate in the way the system operates. But that imperfect balancing does not violate the constitutional guarantee of equal protection under the law, since the system, as a whole, demonstrates that there are specific, articulable goals which might have been carefully considered and defined in passing the various legislation which impacts the funding of public schools in Louisiana, and the methods chosen to implement those goals are rationally related to the accomplishment of the state's objectives.

The court notes that almost every aspect of the Louisiana assessment/distribution scheme which is attacked in this matter has already been challenged on constitutional grounds and has been upheld. In *Scarnato v. Parker*, 415 F.Supp. 272 (M.D La. 1976), the court upheld the constitutionality of the 5-mill equalization formula against a claim that it discriminated against the "wealthier" parishes. The 5-mill equalizing factor was challenged again in *Horne v. La. State Bd. of Elementary and Secondary Education*, 357 So.2d 1216 (La. App. 1st Cir. 1978), *writ. ref.* 359 So.2d 621 (1978), this time on the grounds that it was theoretical in nature and did not properly account for local variations due to assessment practices. The trial court found that the minimum foundation program formula was not unconstitutional. (The matter was dismissed as moot by the appeals court, since all monies to be distributed under the 1976-77 formula had already been distributed, and because the formula varied from year to year and thus the complained-of computation might not stay in the formula in future years). In *Drewett v. State*, 334 So.2d 443 (La. App. 1st Cir. 1976), *writ ref.* 338 So.2d 288 (1976), the

court upheld the constitutionality of the state annual revenue sharing formula, despite the fact that it did not purport to, and did not in fact, reimburse parishes for the exact amount of funds lost by virtue of the homestead exemption. A recent challenge to a parish revenue distribution formula was brought by a municipality on constitutional grounds, alleging that it was unfairly discriminated against because, as a newly incorporated entity, it was not recognized by the parish as an eligible tax-recipient body, although previously incorporated municipalities were so recognized. *Town of Ball v. Rapides Parish Police Jury*, 746 F.2d 1049 (5th Cir. 1984). The court found that this distribution system was constitutional, despite the fact that in that case, residents of the town contributed sales tax, but the town received none of the revenues.

These cases illustrate the deference accorded by the courts to legislative decisions concerning economic matters, particularly when questions of a government's taxing powers are involved. They also demonstrate that the various elements of the scheme which has, as a whole, been challenged by the plaintiffs in this lawsuit have, as separate elements within the system, been upheld against prior constitutional attacks on Fourteenth Amendment grounds.

Plaintiffs have also alleged violations of Article 4, § 2 of the United States Constitution, which states:

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

U.S.C.A.Const.Art.4 § 2

The purpose of this provision is to protect nonresidents from various forms of discrimination by a state based solely upon their status as nonresidents, and to give to citizens of each state the same right within another state as he would be entitled to if he were a citizen of that

state. *Doe v. Bolton*, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973). This provision has no relevance to the matters at issue in this lawsuit.

The court concludes that the Louisiana tax assessment/exemption/distribution system, as it affects the funding of public education in the state of Louisiana, does not violate Article 4, § 2, or the Fourteenth Amendment, § 1 of the United States Constitution. The material facts necessary for the resolution of this question are undisputed, and defendants are entitled to judgment in their favor as a matter of law. Fed.R.Civ.P. 56. Accordingly, the plaintiffs' motion for summary judgment is DENIED; the motions for summary judgment of defendants are GRANTED and this action will be DISMISSED.

/s/ JVP

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
OFFICE OF THE CLERK

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, *et al.*

versus

LOUISIANA STATE BOARD OF ELEMENTARY & SECONDARY EDUCATION & ITS INDIVIDUAL MEMBERS, *et al.*

June 16, 1986

NOTICE OF JUDGMENT

Civil Action No. 85-528-A

TAKE NOTICE that pursuant to Rule 77(d) of the Federal Rules of Civil Procedure, you are hereby notified of entry of judgment in the captioned matter as of this date.

C. LEE DUPIS
Clerk

/s/ Joan Sheets
Deputy Clerk

To: Benton
Macmurdo
Decuir
Harroun

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

Civil Action No. 85-528-A

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, *et al.*

versus

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCTION, *et al.*

JUDGMENT

For the written reasons assigned and filed herein:

IT IS ORDERED ADJUDGED AND DECREED that plaintiffs' motion for summary judgment is hereby DENIED, the motions for summary judgment of defendants are hereby GRANTED, and plaintiffs' suit is hereby DISMISSED.

Baton Rouge, Louisiana, June 13, 1986.

/s/ John V. Parker
JOHN V. PARKER
Chief Judge
Middle District of
Louisiana

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-3470

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, ETC., *et al.*,
Plaintiffs-Appellants,

versus

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, ETC, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Louisiana

---

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion October 22, 5 Cir., 1987, ———F.2d———)

(December 28, 1987)

Before GARWOOD, JOLLY and HILL*, Circuit Judges.

PER CURIAM:

---

* Due to Judge Hill's death on October 19, 1987, the Petitions for Rehearing are being decided by a quorum. 28 U.S.C. 46(d).

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Walt Garwood
United States Circuit Judge

APPENDIX E

UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LOUISIANA CONSTITUTION

ARTICLE 7

* * * *

§ 20. Homestead Exemption

(A) Homeowners.

(1) The bona fide homestead, consisting of a tract of land or two or more tracts of land with a residence on one tract and a field, pasture, or garden on the other tract or tracts, not exceeding one hundred sixty acres, buildings and appurtenances, whether rural or urban, owned and occupied by any person, shall be exempt from state, parish, and special ad valorem taxes to the extent of seven thousand five hundred dollars of the assessed valuation.

(2) The homestead exemption shall extend to the surviving spouse or minor children of a deceased owner and shall apply when the homestead is occupied as such and title to it is in either husband or wife but not to more than one homestead owned by the husband or wife.

(3) This exemption shall not extend to municipal taxes. However, the exemption shall apply (a) in Orleans Parish, to state, general city, school, levee, and levee district taxes and (b) to any municipal taxes levied for school purposes.

(B) Residential Lessees. Notwithstanding any contrary provision in this constitution, the legislature may provide for tax relief to residential lessees in the form of credits or rebates in order to provide equitable tax relief similar to that granted to homeowners through homestead exemptions.

* * * *

§ 26. Revenue Sharing Fund

Section 26. (A) Creation of Fund. The Revenue Sharing Fund is created as a special fund in the state treasury.

(B) Annual Allocation. The sum of ninety million dollars is allocated annually from the state general fund to the revenue sharing fund. The legislature may appropriate additional sums to the fund.

(C) Distribution Formula. The revenue sharing fund shall be distributed annually as provided by law solely on the basis of population and number of homesteads in each parish in proportion to population, and the number of homesteads throughout the state. Unless otherwise provided by law, population statistics of the last federal decennial census shall be utilized for this purpose. After deductions in each parish for retirement systems and commissions as authorized by law, the remaining funds, to the extent available, shall be distributed by first priority to the tax recipient bodies within the parish, as defined by law, to offset current losses because of homestead exemptions granted in this Article. Any balance remaining in a parish distribution shall be allocated to the municipalities and tax recipient bodies within each parish as provided by law.

(D) Distributing Officer. The funds distributed to each parish as provided in Paragraph (C) shall be distributed in Orleans Parish by the city treasurer of New Orleans and in all other parishes by the parish tax collector. The funds allocated to the Monroe City School Board or its successor shall be distributed to and by city treasurer of Monroe.

(E) Bonded Debt. A political subdivision, as defined by Article VI of this constitution, may incur debt by issuing negotiable bonds and may pledge for the payment of all or part of the principal and interest of such bonds the proceeds derived or to be derived from that portion of the funds received by it from the revenue sharing fund, to offset current losses caused by homestead exemptions granted by this Article. Unless otherwise provided by law, no moneys allocated within any parish from the

balance remaining in its distribution may be pledged to the payment of the principal or interest of any bonds. Bonds issued under this Paragraph shall be issued and sold as provided by law, and shall require approval of the State Bond Commission or its successor prior to issuance and sale.

* * * *

ARTICLE 8

Preamble

The goal of the public education system is to provide learning environments and experiences, at all stages of human development that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential.

§ 1. Public Educational System

Section 1. The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.

* * * *

§ 13. Funding; Apportionment

Section 13. (A) Free School Books. The legislature shall appropriate funds to supply free school books and other materials of instruction prescribed by the State Board of Elementary and Secondary Education to the children of this state at the elementary and secondary levels.

(B) Minimum Foundation Program. The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools. The funds appropriated shall be equitably allocated to parish and city school systems according to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation. (Amended December 23, 1987; see text of amendment below)

(C) Local Funds. Local funds for the support of elementary and secondary schools shall be derived from the following sources:

First: Each parish school board, Orleans Parish excepted, and each municipality or city school board actually operating, maintaining, or supporting a separate system of public schools, shall levy annually an ad valorem maintenance tax not to exceed five mills on the dollar of assessed valuation on property subject to such taxation within the parish or city, respectively.

Second: The Orleans Parish School Board shall levy annually a tax not to exceed thirteen mills on the dollar of the assessed valuation of property within the city of New Orleans assessed for city taxation, and shall certify the amount of the tax to the governing authority of the city. The governing authority shall have the tax entered on city tax rolls. The tax shall be collected in the manner, under the conditions, and with the interest and penalties prescribed by law for city taxes. The money thus collected shall be paid daily to the Orleans Parish School Board.

Third: For giving additional support to public elementary and secondary schools, any parish, school district, or sub-school district, or any municipality or city school board which supports a separate city system of public schools may levy an ad valorem tax for a specific purpose, when authorized by a majority of the electors voting in the parish, municipality, district, or subdistrict in an election held for that purpose. The amount, duration, and purpose of the tax shall be in accord with any limitation imposed by the legislature.

(D) Municipal School Systems. For the effects and purposes of this Section, the municipalities of Monroe in Ouachita Parish, and Bogalusa in Washington Parish,

and no others, shall be regarded and treated as parishes and shall have the authority granted parishes.

* * * *

§ 13(B) as amended December 23, 1987

(B) Minimum Foundation Program. The State Board of Elementary and Secondary Education, or its successor, shall annually develop and adopt a formula which shall be used to determine the cost of a minimum foundation program of education in all public elementary and secondary schools as well as to equitably allocate the funds to parish and city school systems. Such formula shall provide for a contribution by every city and parish school system. Prior to approval of the formula by the legislature, the legislature may return the formula adopted by the board to the board and may recommend to the board an amended formula for consideration by the board and submission to the legislature for approval. The legislature shall annually appropriate funds sufficient to fully fund the current cost to the state of such a program as determined by applying the approved formula in order to insure a minimum foundation of education in all public elementary and secondary schools. Neither the governor nor the legislature may reduce such appropriation, except that the governor may reduce such appropriation using means provided in the act containing the appropriation provided that any such reduction is consented to in writing by two-thirds of the elected members of each house of the legislature. The funds appropriated shall be equitably allocated to parish and city school systems according to the formula as adopted by the State Board of Elementary and Secondary Education, or its successor, and approved by the legislature prior to making the appropriation. Whenever the legislature fails to approve the formula most recently adopted by the board, or its successor, the last formula adopted by the board, or its successor, and approved by the legislature shall be used for the determination of the cost of the minimum foundation program and for the allocation of funds appropriated.

LOUISIANA REVISED STATUTES, TITLE 17

* * * *

§ 7. Duties, functions, and responsibilities of board

In addition to the authorities granted by R.S. 17:6 and any powers, duties, and responsibilities vested by any other applicable laws, the board shall:

* * * *

(2) Adopt a minimum foundation program and adopt a formula for the equitable allocation of minimum foundation funds to parish and city school systems. In adopting such program and formula, funding shall be at the pupil-teacher ratio of twenty students to one classroom teacher for kindergarten through grade three and twenty-five students to one classroom teacher for grades four through six, or as provided for in the General Appropriation Bill with the ultimate goal of twenty students to one classroom teacher for kindergarten through grade three and twenty-five students to one classroom teacher for grades four through six. However, if less than the total amount of funds necessary to implement the pupil-teacher ratios provided herein is appropriated in the General Appropriation Bill, the money appropriated on the basis of the regular education portion of the minimum foundation formula shall be applied first to meeting the ratios established for classroom teachers for kindergarten and then for classroom teachers to meet the ratios for each succeeding grade. Any additional classroom teaching positions generated in meeting the ratio requirements shall not be used in computing authorized administrative position allotments. The board shall adopt such program and formula for each ensuing fiscal year in a timely manner so that the program and formula may be submitted to the Joint Legislative Committee on the Budget in accordance with R.S. 17:22(2)(d).

§ 97.1. Formula for minimum foundation program; certain local funds not to be used

No proceeds derived from the sale, lease, or other disposition or use of any sixteenth section lands by a parish or city school board, no allocation of severance taxes, if any, to a parish or city school board, or school system and no portion of the proceeds derived from any sales tax levied and collected by a parish or city school board shall be used or taken into consideration in any formula adopted by the Louisiana State Board of Elementary and Secondary Education and submitted to the legislature for approval as required by Article VIII, Section 13(B) of the Constitution for the allocation of funds to insure a minimum foundation program of education in all public elementary and secondary schools.

Funds derived from the sale, lease, or use of sixteenth section lands heretofore charged against school systems in the minimum foundation program formula shall be replaced by equal amounts from revenues generated by lease or royalties of sixteenth section water bottoms claimed by the State; provided, however, that in the event such replacement revenues are insufficient for such purpose then, and in that event only, revenues generated by lease or royalties from other water bottoms claimed by the state shall be used as needed for the purposes of this Section.

* * * *

§ 421.3. Minimum salary schedule for teachers

A. Effective not later than July 1, 1986 the following minimum salary schedule for a one hundred eighty day school session shall apply with respect to teachers in public elementary and high schools of this state and teachers employed in state schools for the deaf, blind, spastic, and cerebral palsied:

Years of Experience	Two Years' College	Three Years' College	Bachelor's Degree	Master's Degree	Master's Plus 30 Grad. Hrs.	Spec. In Ed. Degree	Ph.D. or Ed.D. Degree
0	$ 9,229	$ 9,817	$12,171	$12,464	$12,464	$12,907	$13,495
1	9,375	9,965	12,464	12,758	12,758	13,200	13,787
2	9,523	10,110	12,758	13,053	13,053	13,495	14,083
3	9,817	10,405	13,053	13,346	13,346	13,787	14,525
4	10,110	10,700	13,346	13,641	13,641	14,083	14,990
5	10,405	10,994	13,641	14,083	14,155	14,603	15,452
6	10,700	11,287	13,936	14,525	14,679	15,142	15,915
7	10,994	11,729	14,230	14,990	15,221	15,684	16,378
8	11,436	12,171	14,525	15,452	15,761	16,223	16,841
9	11,876	12,612	14,990	15,915	16,300	16,765	17,304
10	12,318	13,053	15,452	16,378	16,841	17,304	17,769
11				16,841	17,382	17,844	18,232
12					17,924	18,383	18,671

B. At no time after July 1, 1986 shall the salary of teachers covered by the provisions of this Section be less than the salary they received in 1985-1986; however, teachers who are absent for purposes of sick leave who present a medical certificate attesting to such illness, and those teachers on emergency leave, approved by the superintendent, shall receive the salary provided in the schedule herein, and those teachers on sabbatical leave shall receive the pay based on this schedule as authorized by R.S. 17:1184.

C. The allotment schedule for personnel included in R.S. 17:421.5 whose salaries are provided for in the minimum foundation formula shall not exceed a sum of twelve hundred dollars above the supervisory allotment schedule in effect based upon the minimum salary for teachers effective July 1, 1982.

D. Notwithstanding any other provision of law to the contrary, the funds of any parish or city school board heretofore used as supplementary salary shall continue to be passed on to the individual teacher.

[Prior to the 1986 amendment, the minimum salary schedule for teachers provided:]

"Years of Experience	Two Years' College	Three Years' College	Bachelor's Degree	Master's Degree	Master's Plus 30 Grad. Hrs.	Spec. In Ed. Degree	Ph.D. or Ed.D. Degree
0	$ 8625	$ 9175	$11,375	$11,649	$11,649	$12,063	$12,612
1	8762	9313	11,649	11,923	11,923	12,336	12,885
2	8900	9449	11,923	12,199	12,199	12,612	13,162
3	9175	9724	12,199	12,473	12,473	12,885	13,575
4	9449	10,000	12,473	12,749	12,749	13,162	14,009
5	9724	10,275	12,749	13,162	13,229	13,670	14,441
6	10,000	10,549	13,024	13,575	13,719	14,151	14,874
7	10,275	10,962	13,299	14,009	14,225	14,658	15,307
8	10,688	11,375	13,575	14,441	14,730	15,162	15,739
9	11,099	11,787	14,009	14,874	15,234	15,668	16,172
10	11,612	12,199	14,441	15,307	15,739	16,172	16,607
11				15,739	16,245	16,677	17,039
12					16,751	17,183	17,471"

APPENDIX F

TEACHER SALARIES IN LOUISIANA

While the state has maintained a pupil-teacher ratio comparable with the national ratio, the established average salary of public school teachers has been consistently below the national average. In the 1982-83 school year, the difference narrowed somewhat; however, 1983-84 estimates again leave Louisiana with a relatively low (36th) ranking. According to

* * * *

National Education Association estimates, Louisiana paid its public school teachers 81.4 percent of the national average in 1969-70, 82.1 percent of that average in 1974-75, and 86.7 percent of the national average in 1983-84.[25] The estimated average salary of public school teachers nationally was $22,029 in 1983-84, compared with the Louisiana average of $19,100, according to NEA.

It should be noted that data collected at the Louisiana Department of Education indicate that the average classroom teacher in the state made approximately $18,400 in 1983-84, or 83.5 percent of the estimated national average. This figure is more accurate than the NEA estimate of Louisiana teachers' salaries, since it is based on the direct financial reports from the parishes.

The state ranked last in percent of male teachers in public elementary and secondary schools. In 1983-84, NEA estimated that approximately 18 percent of the teachers in Louisiana were male, compared with the estimated national average of approximately 32 percent. (Actual statistics compiled by the Bureau of Research indicated 19.7 percent of Louisiana school teachers were male in 1983-84.)

Source: *135th Annual Financial and Statistical Report, 1983-84 Session, Bulletin 1472,* Louisiana Department of Education, pp. 43-44.

APPENDIX G

EXPERIENCE OF PUBLIC TEACHERS

East Baton Rouge Parish
(See Item 10, p. 186)

	Less Than One Yr.	1-2 Yrs.	3-5 Yrs.	6-9 Yrs.	10-12 Yrs.	13-14 Yrs.	15 or More	Total
Elementary	45	92	198	366	235	149	550	1,635
Secondary	30	78	167	332	221	181	558	1,567
Total	75	170	365	698	456	330	1,108	3,202

Grant Parish
(See Item 10, page 206)

	Less Than One Yr.	1-2 Yrs.	3-5 Yrs.	6-9 Yrs.	10-12 Yrs.	13-14 Yrs.	15 or More	Total
Elementary	6	14	17	21	9	18	51	136
Secondary	5	9	11	9	6	7	22	69
Total	11	23	28	30	15	25	73	205

Livingston Parish
(See Item 10, page 246)

	Less Than One Yr.	1-2 Yrs.	3-5 Yrs.	6-9 Yrs.	10-12 Yrs.	13-14 Yrs.	15 or More	Total
Elementary	16	63	86	136	64	29	123	517
Secondary	5	9	34	54	35	20	68	225
Total	21	72	120	190	99	49	191	742

Rapides Parish
(See Item 10, page 278)

	Less Than One Yr.	1-2 Yrs.	3-5 Yrs.	6-9 Yrs.	10-12 Yrs.	13-14 Yrs.	15 or More	Total
Elementary	38	43	90	148	117	77	327	840
Secondary	21	28	45	86	73	36	191	480
Total	59	71	135	234	190	113	518	1,320

Source: *135th Annual Financial and Statistical Report, 1983-84 Session, Bulletin 1472*, Louisiana Department of Education, pp. 186, 206, 246 and 278.

APPENDIX H

State-Times, Monday, August 24, 1987, B Section, page 1

FISCAL PROBLEMS HELP EBR TO GET VETERAN TEACHERS

By Edward Pratt
State-Times writer

Late last school year, local public school system officials were bemoaning the fact that large numbers of local college of education graduates were signing up to do their teaching in other states.

Out-of-state recruiters were barnstorming across Louisiana offering big salaries and capitalizing on the fact that education funding in the state was suffering.

At the same time, however, the problems that were hurting education in Louisiana would prove a boon for East Baton Rouge Parish schools.

Several outlying parishes were having severe money problems. Teacher salaries in those school systems were being threatened. And simultaneously, the local public school system was working to pass a tax election boosting teacher salaries by 5 percent.

What happened next was a windfall for local public education, according to Assistant Superintendent for Personnel Donald Fleet.

Dozens of teachers, many with master's degrees and more than 10 years of experience in the classroom, flocked to apply in the EBR system.

"We didn't have to find them; they found us," said Millie Williams, a supervisor of personnel who interviewed prospective high school teachers.

"What we have ended up with is the cream of the crop this year," Fleet said.

"For the first time in five years, we did not just get certified teachers. We got not only experienced teachers, but qualified, certified teachers," Fleet said. "Notice I said qualified, certified teachers."

A large number of the new teachers came from Livingston, Pointe Coupee, Tangipahoa, East Feliciana and West Baton Rouge parishes. Teacher salaries in those parishes either were reduced or were not expected to improve, Fleet said.

With the 5.5 percent raises teachers were given here this year, the average annual salary of EBR teachers is about $22,000 or about $2,000 more than the state's average.

"What we got this year was 1,000 percent over what has happened in the past," he said. "It was the best year in terms of quality hiring in the past four or five years."

Because EBR was able to offer better salaries at the same time the pay of many of these teachers was being cut or not improved a signal went out that EBR was the place to come, Fleet said.

"We have been able to get more experienced teachers in many areas, including physics and mathematics," Williams said.

"We were able to get experienced teachers, and we had a better assortment of good teachers," said Annette Rivault, director of personnel for elementary schools.

"In situations where we needed a teacher with experience, we were able to get them," she said.

Williams and Rivault said the influx of experienced teachers helped in other ways.

"We could be very selective in who we hired," Williams said.

"We also were able to pick a lot of experienced black teachers this year," Rivault said.

Fleet had said during the summer that the school system was in desperate need of more black teachers.

Mable Jackson is one of those new teachers the local school system was able to sign. She is black and has 15 years of experience.

Jackson said she and a friend were contemplating leaving the East Feliciana school system last year. News that salaries in that parish might be cut, coupled with the fact that East Baton Rouge needed more black teachers, encouraged her to make the move here.

"And I decided I needed to be closer to home," said Jackson, who lives in Baton Rouge. Jackson now teaches kindergarten at Northeast Elementary School.

Another of the new teachers is Elsie Poydras. She is a teacher with 19 years of experience to go along with her master's degree plus 30 hours.

She taught in Pointe Coupee Parish. Last year, she heard the school board there was contemplating cutting salaries by 6.9 percent.

"I'm an old veteran teacher, and I don't think I should have been treated like that. I had given my whole life to the parish," she said.

Despite Pointe Coupee "being my first love," Poydras said she decided to give EBR a try.

Poydras said she had not thought about the raise local teachers were getting this year.

"I knew it was better paying in this parish," she said.

Poydras teaches second grade at Audubon Elementary school.

Pay had a lot to do with Catherine Saizon deciding to leave Pointe Coupee. Saizon, a first-grade teacher with

14 years of experience, said she left because the board there was recommending a cut in salary "and because I needed a change."

"I think the new ideas that I will get here is something that I have not been exposed to," she said. "I think this will help my career as a teacher."

Saizon teaches at Belfair Elementary school.

Saizon, like the other teachers interviewed, would not say how much their salaries have improved. However, she said, "it is a lot better."

APPENDIX I

Parish	1 Number of Students	2 Total Expenditure Per ADM	Rank	3 Total Cost of MFP	4 MFP Funds from State	Percent of MFP Paid by State	Rank	State MFP Per Child	Rank
Acadia	10,752	2,324.59	54	12,146,760	11,634,399	95.78%	36	1,082	53
Allen	4,953	2,338.31	52	5,873,475	5,691,529	96.90%	13	1,149	34
Ascension	12,269	2,738.84	19	14,194,072	13,353,675	94.08%	47	1,088	50
Assumption	5,294	2,354.82	50	6,306,783	5,928,289	94.00%	48	1,120	45
Avoyelles	8,666	2,310.89	56	10,190,617	9,964,992	97.79%	6	1,150	33
Beauregard	7,522	2,415.42	40	8,984,325	8,603,254	95.76%	37	1,144	36
Bienville	3,641	2,779.04	16	4,867,248	4,281,415	87.96%	63	1,176	27
Bossier	19,075	2,371.03	46	22,463,754	21,653,181	96.39%	27	1,135	38
Caddo	48,973	2,582.67	27	55,811,962	52,648,277	94.33%	45	1,075	54
Calcasieu	34,003	2,403.81	41	38,040,210	35,338,660	92.90%	51	1,039	59
Caldwell	2,331	2,533.55	31	3,192,766	3,109,480	97.39%	8	1,334	5
Cameron	2,259	6,098.70	1	2,978,038	2,295,364	77.08%	65	1,016	63
Catahoula	2,707	3,045.54	7	4,214,072	4,103,614	97.38%	9	1,516	2
Claiborne	3,370	2,576.19	28	4,391,488	4,122,947	93.88%	49	1,223	16
Concordia	5,085	2,492.18	35	6,172,940	5,971,543	96.74%	19	1,174	28
De Soto	6,550	2,386.46	44	7,112,288	6,886,834	96.83%	17	1,051	56
East Baton Rouge	59,619	2,909.60	12	70,171,471	65,035,291	92.68%	52	1,091	49
East Carroll	2,568	2,611.56	23	3,022,667	2,901,339	95.99%	32	1,130	41
East Feliciana	3,521	2,347.09	51	4,429,021	4,254,327	96.06%	31	1,208	20
Evangeline	7,649	2,144.00	64	8,958,326	8,648,608	96.54%	24	1,131	39
Franklin	5,767	2,515.04	34	7,504,626	7,348,790	97.92%	5	1,274	11

Parish	1 Number of Students	2 Total Expenditure Per ADM	Rank	3 Total Cost of MFP	4 MFP Funds from State	Percent of MFP Paid by State	Rank	State MFP Per Child	Rank
Grant	3,994	2,187.75	62	5,033,971	4,944,682	98.23%	3	1,238	14
Iberia	16,326	2,298.72	58	19,833,367	19,022,643	95.91%	34	1,165	30
Iberville	6,397	3,108.09	6	8,376,864	7,349,629	87.74%	64	1,149	35
Jackson	3,307	2,820.63	14	4,725,550	4,558,525	96.47%	26	1,378	4
Jefferson	57,047	2,984.42	8	71,802,861	66,532,708	92.66%	54	1,166	29
Jefferson Davis	7,411	2,366.64	47	8,599,931	8,125,204	94.48%	44	1,096	48
Lafayette	27,402	2,424.88	38	32,369,933	29,686,212	91.71%	58	1,083	52
Lafourche	17,990	2,419.11	39	20,499,768	19,567,251	95.45%	39	1,088	51
LaSalle	3,575	2,590.21	25	4,551,881	4,387,437	96.39%	28	1,227	15
Lincoln	6,467	2,305.33	57	7,702,622	7,257,246	94.22%	46	1,122	43
Livingston	15,880	1,892.18	66	16,748,830	16,485,442	98.43%	2	1,038	60
Madison	3,633	2,366.17	48	4,123,776	3,983,433	96.60%	22	1,096	47
Morehouse	6,893	2,533.24	32	8,054,752	7,653,808	95.02%	42	1,110	46
Natchitoches	8,184	2,939.37	10	10,968,487	10,655,209	97.14%	11	1,302	7
Orleans	86,559	2,912.27	11	92,070,414	85,744,786	93.13%	50	991	64
Ouachita	17,582	2,587.43	26	20,630,407	19,764,136	95.80%	35	1,124	42
Plaquemines	5,301	2,602.52	24	6,216,973	3,857,667	62.05%	66	728	65
Pointe Coupee	3,883	3,229.88	3	5,598,366	5,153,141	92.05%	56	1,327	6
Rapides	24,349	2,379.80	45	30,511,021	29,474,900	96.60%	21	1,211	19
Red River	1,902	2,518.90	33	2,571,227	2,475,509	96.28%	29	1,302	8
Richland	5,037	2,477.29	37	6,247,353	6,052,050	96.87%	15	1,202	21
Sabine	5,387	2,388.95	43	6,795,487	6,580,727	96.84%	16	1,222	17
St. Bernard	10,044	2,706.92	20	12,667,045	12,061,432	95.22%	41	1,201	22
St. Charles	8,220	3,135.84	4	10,685,132	9,490,886	88.82%	62	1,155	32

St. Helena	2,420	2,742.44	18	3,222,938	3,123,837	96.93%	12	1,291	10
St. James	4,602	3,133.29	5	6,152,064	5,508,399	89.54%	61	1,197	24
St. John the Baptist	6,545	2,565.40	30	7,751,400	7,395,609	95.41%	40	1,130	40
St. Landry	18,696	2,391.80	42	22,651,599	21,765,272	96.09%	30	1,164	31
St. Martin	9,295	2,211.76	61	10,793,744	10,414,270	96.48%	25	1,120	44
St. Mary	13,134	2,879.21	13	15,085,932	13,615,101	90.25%	60	1,037	61
St. Tammany	23,746	2,332.65	53	26,222,653	25,386,842	96.81%	18	1,069	55
Tanipahoa	17,046	2,252.86	59	19,964,401	19,457,733	97.46%	7	1,141	37
Tensas	1,654	2,960.28	9	2,495,552	2,393,962	95.93%	33	1,447	3
Terrebonne	21,593	2,322.08	55	24,320,633	22,538,097	92.67%	53	1,044	58
Union	4,392	2,181.12	63	5,594,788	5,352,753	95.67%	38	1,219	18
Vermilion	9,817	2,792.46	15	11,182,413	10,316,566	92.26%	55	1,051	57
Vernon	12,677	2,041.19	65	13,195,236	12,990,292	98.45%	1	1,025	62
Washington	5,365	2,673.70	22	7,076,896	6,941,341	98.08%	4	1,294	9
Webster	8,945	2,363.40	49	11,050,710	10,708,280	96.90%	14	1,197	23
West Baton Rouge	3,901	2,763.40	17	5,032,422	4,610,317	91.61%	59	1,182	25
West Carroll	3,006	2,575.67	29	3,939,831	3,804,055	96.55%	23	1,265	12
West Feliciana	1,944	3,649.36	2	2,485,494	2,286,407	91.99%	57	1,176	26
Winn	4,032	2,689.22	21	5,238,194	5,061,709	96.63%	20	1,255	13
City of Bogalusa	10,779	2,244.14	60	5,060,295	4,922,384	97.27%	10	457	66
City of Monroe	4,312	2,478.28	36	12,472,753	11,835,578	94.89%	43	2,745	1

Sources:

1. *Louisiana Department of Education Bulletin 1472—1938-84 Session* ("1983-84 Annual Report), p. 388.
2. Trial Exhibits, Tab. 11 (Compilation of data from 1983-84 Annual Report).
3. Brief Appendix, Tab. 25 (Compilation of data from 1983-84 Annual Report).
4. Brief Appendix, Tab. 25 (Compilation of data from 1983-84 Annual Report).

(2)

No. 87-1605

SUPREME COURT, U.S.
FILED
JUN 2 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, ET AL,

Petitioners

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, ET AL,

Respondents

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

R. Bruce Macmurdo
Steffes & Macmurdo
10311 Jefferson Highway
Suite A-2
Baton Rouge, LA 70809
Telephone: (504) 291-5857
Attorneys for Defendants-Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

9 pp

PARTIES TO THE PROCEEDINGS

The following parties are petitioners in the proceeding for writ of certiorari:

School Board of the Parish of Livingston, Louisiana
School Board of the Parish of Grant, Louisiana
Charles L. Shilling
Vernon D. Garrison
Hubert S. Stilley, Jr.
Norman J. Breland
Patricia L. Breland
James E. Smith
Gary Ratcliff
Delaine G. Gendusa
David J. Gendusa
Elizabeth Allison Breland
Andree E. Breland
Louis J. Breland
James E. Smith, Jr.
Bryan Smith
Jeremy Smith
Leslie Rae Ratcliff
Christie Lane Ratcliff
Ross J. Gendusa
Carla D. Gendusa

The following parties are respondents in the proceeding for writ of certiorari:

Louisiana State Board of Elementary and Secondary Education
Claire Roy Landry
Bro. Felician Fourrier, S.C.
Marie Louise Snellings
James V. Soileau
Gloria Harrison
Martha Scott Henry
Keith Johnson
Jack Pellegrin
Milton Hamel

Jesse H. Bankston
John A. Bertrand
A. J. Roy
Mary Evelyn Parker, former Treasurer of the State of Louisiana
Joseph H. Burris, Legislative Auditor of the State of Louisiana

TABLE OF CONTENTS

Page

ARGUMENT

I. The precise issue posed by the petition for writ was decided in San Antonio v. Rodriguez 1

II. Louisiana does not discriminate against the petitioners in its distribution of state funds 4

III. Petitioners offered no evidence that students in the complaining school system are receiving an inadequate education 7

IV. Contrary to petitioners' assertions, Louisiana provides for substantial local control over public elementary and secondary schools 8

CONCLUSION 9

TABLE OF AUTHORITIES

Page

CASES:

Papasan v. Allain, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) 4, 5

San Antonio Independent School District v. Rodriguez, 411 U.S. 163, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) ..... *passim*

STATUTES:

Louisiana Constitution:

Article 8, Section 3 8

Article 8, Sections 9 and 10 8

No. 87-1605

—o—

In The

Supreme Court of the United States

October Term, 1987

—o—

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, ET AL,

Petitioners

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, ET AL,

Respondents

—o—

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

—o—

ARGUMENT

I. THE PRECISE ISSUE POSED BY THE PETITION FOR WRIT WAS DECIDED IN SAN ANTONIO V. RODRIGUEZ.

The case at bar is legally indistinguishable from *San Antonio Independent School District v. Rodriguez*, 411

U.S. 163, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). Petitioners here contend that Louisiana should be forced to adopt a system for funding public education which provides sufficiently more state money per student to the parishes (counties) with relatively less taxable local wealth to ensure that the same amount of money ultimately is spent per child for education in each loyal system across the state. Louisiana, like Texas and the great majority of states, funds public schools from a mixture of state, federal and local sources. The level of the local contribution varies according to the desire and ability of each county or parish to raise funds for its schools and thus the amount spent per child varies among the different school districts. The plaintiffs' writ application raises precisely the same issue that was decided in *Rodriguez* in which the constitutionality of Texas' school funding system was upheld.

The net effect of Texas' system of financing public education and Louisiana's is quite similar; actually, Louisiana's system shows less of the "discrimination" of which the petitioners complain. Louisiana provides a greater percentage of funds relative to the local district's contribution than was found in the Texas system; that is, Louisiana provides 53.4 per cent of funding and the local districts pay 36.8 per cent whereas in Texas the locals apparently roughly match the state's payments. See petitioners' writ application, p. 3; *Rodriguez*, 93 S.Ct. at 1303. The discrepancy in funds spent per child in the ten districts in Texas with the highest per capita taxable value compared to the per pupil expenditure in the least "property wealthy" districts is roughly a 2.7 to 1 ratio. *Rodriguez*, 93 S.Ct. at 1287. In Louisiana (omitting from discussion

anomalous Cameron Parish, a sparsely populated coastal parish with tremendous oil revenues), the ratio of the second greatest parish expenditure per child to the lowest such expenditure is less than 2 to 1. See respondents' Appendix A which was petitioner's Exhibit 7 at trial.

The *Rodriguez* Court concluded that those districts having more valuable property had a greater capability for supplementing state funds which led to inter-district disparities in the amount of money spent per child. *Rodriguez*, 93 S.Ct. at 1303. However, the Court rejected Plaintiffs' notion that a publicly funded education is a fundamental right guaranteed under the Constitution or that any suspect category was involved in the Texas system of financing public education in part by local taxing effort. The Court concluded that the existence of some inequalities between the districts was not a sufficient basis for striking down the system. Moreover, the Texas system would not be held unconstitutional just because there might be some methods of satisfying the State's interest which occasioned "less drastic" disparities and expenditures. *Rodriguez*, 93 S.Ct. at 1306. Finally, the Court concluded that under the Texas plan, the State abundantly satisfied the "rationality" test. *Rodriguez*, 93 S.Ct. at 1308.

Petitioners cite in their brief Louisiana's homestead exemption which insulates the first $75,000 of value of residential properties from taxation and the exemption's allegedly deleterious effect on the plaintiff parishes' ability to tax for school funding. Petitioners argue that this twist to the Louisiana taxation system distinguishes the case from *Rodriguez*. This Court's *Rodriguez* decision, however, evinced little concern for the exact details of the Texas

system of taxation and reimbursement to the local systems but instead proclaimed the broad discretion afforded to the legislature over such matters, stating as follows:

> "We have here nothing less than a direct attack on the way in which Texas has chosen to raise and disburse state and local tax revenues . . . The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized . . . It has been pointed out that in taxation even more than in other fields legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with the local conditions which this court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes" . . . *Rodriguez,* 93 S.Ct. at 1300-1301.

Just as in *Rodriguez,* the plaintiffs here have not been able to identify a cognizable class of persons (much less a "suspect" category) who are disadvantaged under the Louisiana system of funding public education. For example, the taxpayers in Livingston and Grant Parishes who are supposedly disadvantaged by the homestead exemption law have among their numbers numerous homeowners who are precisely the beñeficiaries of the exemption. If these homeowners want to raise more money to supplement the state's appropriation, they can vote to increase their tax rates, a burden which is offset by their savings from the homestead exemption.

II. LOUISIANA DOES NOT DISCRIMINATE AGAINST THE PETITIONERS IN ITS DISTRIBUTION OF STATE FUNDS.

Petitioners suggest that this Court's decision in *Papasan v. Allain,* 106 S.Ct. 2932 (1986), is controlling, ap-

parently on the theory that by allowing parishes to retain local sales tax revenues, Louisiana has made a "deliberate state decision to divide resources unequally among school districts." Petitioners' writ application, p. 21. The flaw in this argument is that locally imposed and collected sales tax revenues are not state resources. Petitioners offer no legal authority to support their radical premise that a state must collect all sales taxes and then redistribute them to counties on a per capita basis so that the same amount is spent for services on each resident of the state.

At issue in *Papasan* was Mississippi's decision to distribute certain state funds unequally to school districts by a ratio of 100 to 1 in some cases. Justice White, writing the majority opinion, distinguished *Papasan* from *Rodriguez* as follows:

> "This case is therefore very different from *Rodriguez*, where the differential financing available to school districts was traceable to school district funds available from local real estate taxation, not to a state decision to divide state resources unequally among school districts. The rationality of the disparity in *Rodriguez*, therefore, which rested on the fact that funding disparities based on differing local wealth were a necessary adjunct of allowing meaningful local control over school funding, does not settle the constitutionality of disparities alleged in this case, and we differ with the Court of Appeals in this respect." Papasan, 106 S.Ct. at 2946.

In a three member dissent, Justice Powell argued that since Mississippi's overall system of funding is similar to that employed by Texas in *Rodriguez*, "another reason" is presented for rejecting Papasan's claim. Papasan 106 S.Ct. at 2952, n.6. Justice White correctly notes that *Rodriguez* "upheld the overall structure of Texas' public

school financing and the component of that system allowing for variations due to local taxation" but that *Rodriguez* does not validate all disparities (i.e., such as the disbursement by Mississippi of 100 times more funds for Section 16 lands to one county over another) just because the overall structure of funding is similar to that employed in Texas. Papasan 106 S.Ct. at 2945, n. 16.

The Board of Elementary and Secondary Education does not argue here that the *Rodriguez* decision allows it to disburse wildly varying amounts of funds to the school districts of Louisiana. The central issue of the Papasan case—unequal distribution of state funds to local districts—has no relevance to this litigation.

Instead, as noted by United States Court of Appeals, Fifth Circuit, Louisiana actually discriminates in the distribution of minimum foundation funds in favor of parishes with relatively less real estate value through the "equalization factor" which deducts an assumed five and a half mills local tax thereby reducing by a greater amount the funds to the parishes with relatively more taxable wealth. The percentage of minimum foundation costs paid by the state is thus high for the plaintiff parishes Livingston and Grant; i.e., second and third highest in the state. See petitioners' Appendix I.

The actual amount of state funds sent per student varies according to a multitude of factors which affect the cost of services such as the number of special education students, the experience level of teachers and the size of the schools. Although there are some discrepancies because of these factors, the equalization factor does serve to favor those parishes with less ability to raise local

taxes. See opinion of apeals court, Petitioners' Appendix A. Petitioners' Appendix I also shows that the urban regions of Louisiana (which according to petitioners' argument are unduly advantaged by having better sales and property tax opportunities) are in the lowest tier of recipients of state funds per student; for example: Orleans (New Orleans) 50th; Caddo (Shreveport) 45th; East Baton Rouge, 52d; Lafayette, 58th; and Calcasieu (Lake Charles) 41st.

Louisiana's revenue sharing system is a further attempt to assist parishes with less taxable wealth. A state collected fund is disbursed back to the parishes on essentially a per capita basis with the funds to each parish then being divided among various entities including the school board. This is precisely the type of system which petitioners desire; their only lament is that not enough compensatory aid is sent to equalize completely the amounts spent on education for each student across the state.

III. PETITIONERS OFFERED NO EVIDENCE THAT STUDENTS IN THE COMPLAINING SCHOOL SYSTEMS ARE RECEIVING AN INADEQUATE EDUCATION.

In their writ application, petitioners concede that they cannot prove that the students in their school systems are not receiving a "minimally adequate education." Petitioners' writ application at p. 24. The Fifth Circuit of course noted that the record contained no evidence that a Louisiana school child has received an inadequate education because of insufficiency of funds and that the parties to the litigation conceded that all relevant facts were before the Court. Petitioners' Appendix A at 10a.

Petitioners have thus failed to offer any proof that the discrepancies in the amount of money spent per child for public education in Louisiana are related to the quality of education received. Although surprising at first blush, there is no consensus among educators that at certain levels, the spending of any extra money per child means there will be an increase in the quality of education the child will receive. The *Rodriguez* Court expressly noted that more money does not necessarily mean a better education. See *Rodriguez* at footnotes 56, 86 and 101.

IV. CONTRARY TO PETITIONERS' ASSERTIONS, LOUISIANA PROVIDES FOR SUBSTANTIAL LOCAL CONTROL OVER PUBLIC ELEMENTARY AND SECONDARY SCHOOLS.

Petitioners argue that there is nothing in the Louisiana Constitution that guarantees local control of schools and that Louisiana's system of organizing its schools does not serve the same salutory goal of allowing a measure of local involvement in determining public education policies that allowed the Texas system to be upheld in *Rodriguez*. Petition for writ at pp. 15 and 23. To the contrary, the Louisiana Constitution expressly forbids the State Board of Elementary and Secondary Education from exerting "control over the business affairs of a parish or city school board or the selection or removal of its officers and employees." Article 8, Section 3, La. Constitution of 1974. The Constitution further provides for the creation of parish school boards and recognizes all parish and city school boards in existence in 1974. Article 8, Sections 9 and 10.

As petitioners have noted there is no state involvement in the construction of schools. This is a local function that the parishes decide on their own and for which they are empowered to levy bonds and pass taxes as desired. Local elected school boards administer the affairs of the public school systems in every parish in the state. The rational basis of permitting local control of public education observed in the *Rodriguez* decision is thus equally present in the Louisiana system.

———o———

CONCLUSION

The issue before the Court is the same one that it confronted in *Rodriguez*—whether a state may establish a system for funding public education which relies in part on funding from local sources with the result that the total amount of money spent per child varies among the local school systems of the state. In an attempt to distinguish this case from *Rodriguez,* the plaintiffs have launched a rambling attack on the particulars of the Louisiana system of taxation, revenue sharing and homestead exemption. None of these mechanisms discriminate against the petitioner parishes; in fact the revenue sharing system and the equalization factor in the minimum foundation formula discriminate in favor of parishes with less taxable wealth. The discrepancies in total funding available per student engendered by the partial reliance on local funding is much less than was present in Texas when *Rodriguez* was decided. Moreover the plaintiffs have offered no proof that the level of difference in funds expended per

student has anything to do with the quality of education received by students.

This Court has wisely allowed the States great deference in their establishment of systems of taxation and funding of governmental programs. The Louisiana system serves the rational purpose of allowing a measure of local control over the affairs of the public educational system. The issues raised by the plaintiffs are political ones which should be, and have been in the past, brought before the state legislature. The petitioners' writ application should be denied.

Respectfully submitted,

/s/ R. Bruce Macmurdo
Steffes & Macmurdo
10311 Jefferson Highway
Suite A-2
Baton Rouge, LA 70809
Telephone: (504) 291-5857
Attorneys for Defendants-Respondents

APPENDIX

EXHIBIT 7

Current Expenditure and Rank per ADM by School District, State of Louisiana, 1979-1984

Sheet 1

Parish	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
Acadia	$1,533 (56)	$1,785 (62)	$2,077 (59)	$2,345 (43)	$2,325 (54)
Allen	1,758 (30)	1,853 (56)	2,138 (53)	2,149 (62)	2,338 (52)
Ascension	1,593 (51)	2,221 (18)	2,473 (22)	2,485 (26)	2,739 (19)
Assumption	1,542 (55)	1,767 (63)	2,106 (57)	2,301 (49)	2,355 (50)
Avoyelles	1,593 (50)	1,954 (46)	2,226 (43)	2,325 (47)	2,311 (56)
Beauregard	1,616 (47)	1,980 (43)	2,174 (48)	2,365 (41)	2,415 (40)
Bienville	1,746 (32)	2,392 (9)	2,209 (45)	2,987 (9)	2,779 (16)
Bossier	1,564 (53)	1,799 (59)	2,139 (52)	2,331 (45)	2,371 (46)
Caddo	1,852 (19)	2,227 (17)	2,468 (23)	2,589 (24)	2,583 (27)
Calcasieu	1,675 (43)	2,110 (26)	2,475 (21)	2,464 (28)	2,404 (41)
Caldwell	1,865 (14)	2,091 (29)	2,316 (37)	2,433 (32)	2,534 (31)
Cameron	2,383 (2)	2,998 (2)	3,511 (2)	5,875 (1)	6,099 (1)
Catahoula	1,864 (16)	2,276 (12)	2,660 (13)	2,804 (17)	3,046 (7)
Claiborne	1,751 (31)	2,095 (27)	2,323 (35)	2,498 (25)	2,576 (28)
Concordia	1,687 (39)	2,113 (25)	2,381 (27)	2,393 (37)	2,492 (35)
De Soto	1,388 (62)	1,883 (54)	2,339 (31)	2,337 (44)	2,386 (44)
East Baton Rouge	1,809 (23)	2,193 (20)	2,652 (15)	3,310 (6)	2,910 (12)
East Carroll	1,705 (37)	2,141 (24)	2,252 (39)	2,415 (33)	2,612 (23)

Source: computer data base and library and records of Louisiana Department of Education, as compiled by Bob Garvue.

Current Expenditure and Rank per ADM by School District,
State of Louisiana, 1979-1984

Parish	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
East Feliciana	$1,601 (49)	$1,939 (47)	$2,234 (42)	$2,278 (53)	$2,347 (52)
Evangeline	1,859 (18)	1,915 (51)	2,055 (61)	2,157 (61)	2,144 (64)
Franklin	1,820 (22)	1,985 (39)	2,393 (26)	2,395 (35)	2,515 (34)
Grant	1,643 (45)	1,792 (60)	2,129 (55)	2,209 (57)	2,188 (62)
Iberia	1,672 (44)	1,939 (47)	2,175 (47)	2,299 (50)	2,299 (58)
Iberville	1,980 (11)	2,487 (5)	2,928 (6)	3,134 (7)	3,108 (6)
Jackson	2,009 (9)	2,159 (23)	2,548 (16)	2,994 (8)	2,821 (14)
Jefferson	1,774 (27)	2,269 (13)	2,661 (12)	2,789 (18)	2,984 (8)
Jefferson Davis	1,547 (54)	1,982 (41)	2,173 (49)	2,293 (52)	2,367 (47)
Lafayette	1,737 (33)	2,530 (4)	3,205 (3)	3,324 (5)	2,425 (38)
Lafourche	1,532 (57)	2,838 (57)	2,025 (62)	2,222 (56)	2,419 (39)
LaSalle	1,387 (63)	1,789 (61)	2,247 (41)	2,616 (22)	2,590 (25)
Lincoln	1,638 (46)	1,984 (40)	2,173 (50)	2,253 (55)	2,305 (57)
Livingston	1,224 (66)	1,559 (64)	1,767 (66)	1,901 (66)	1,892 (66)
Madison	1,678 (42)	2,017 (37)	2,201 (46)	2,304 (48)	2,366 (48)
Morehouse	1,791 (25)	1,962 (45)	2,425 (25)	2,158 (60)	2,533 (32)
Natchitoches	1,714 (35)	2,254 (15)	2,727 (9)	2,938 (13)	2,939 (10)
Orleans	1,865 (15)	2,095 (27)	2,525 (17)	2,665 (20)	2,912 (11)

Current Expenditure and Rank per ADM by School District,
State of Louisiana, 1979-1984

Sheet 3

Parish	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
Ouachita	$1,317 (64)	$1,551 (66)	$2,018 (64)	$2,394 (36)	$2,587 (26)
Plaquemines	N.A.	2,800 (58)	2,375 (28)	2,710 (19)	2,603 (24)
Pointe Coupee	1,936 (12)	2,429 (8)	2,973 (5)	3,394 (3)	3,230 (3)
Rapides	1,583 (52)	2,047 (34)	2,306 (38)	2,452 (30)	2,380 (45)
Red River	1,861 (17)	2,085 (32)	2,365 (29)	2,456 (29)	2,519 (33)
Richland	2,219 (5)	1,981 (42)	2,739 (7)	2,327 (46)	2,477 (37)
Sabine	2,289 (4)	1,919 (50)	2,060 (60)	2,185 (59)	2,389 (43)
St. Bernard	1,773 (28)	2,336 (10)	2,512 (19)	2,961 (10)	2,707 (20)
St. Charles	2,729 (1)	3,129 (1)	4,467 (1)	3,373 (4)	3,136 (4)
St. Helena	1,430 (61)	1,926 (49)	2,316 (36)	2,356 (42)	2,742 (18)
St. James	1,990 (10)	2,269 (13)	2,697 (11)	2,955 (11)	3,133 (5)
St. John the Baptist	1,778 (26)	2,047 (34)	2,516 (18)	2,646 (21)	2,565 (30)
St. Landry	1,519 (58)	2,052 (33)	2,358 (30)	2,375 (39)	2,392 (42)
St. Martin	1,682 (41)	2,190 (21)	2,250 (40)	2,379 (38)	2,212 (61)
St. Mary	1,759 (29)	2,235 (16)	2,705 (10)	2,868 (14)	2,879 (13)
St. Tammany	1,499 (59)	1,555 (65)	1,996 (65)	2,195 (58)	2,333 (53)
Tangipahoe	1,602 (48)	1,889 (53)	2,136 (54)	1,935 (65)	2,253 (59)
Tensas	2,044 (8)	2,470 (6)	2,479 (20)	2,831 (15)	2,960 (9)

Current Expenditure and Rank per ADM by School District, State of Louisiana, 1979-1984

Sheet 4

Parish	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984
Terrebonne	$1,680 (38)	$2,043 (36)	$2,339 (32)	$2,464 (27)	$2,322 (55)
Union	1,497 (60)	1,860 (55)	2,156 (51)	2,131 (63)	2,181 (63)
Vermilion	2,076 (7)	2,090 (30)	2,652 (14)	2,873 (13)	2,792 (15)
Vernon	1,685 (40)	2,292 (11)	2,123 (56)	2,369 (40)	2,041 (65)
Washington	1,897 (13)	2,167 (22)	2,324 (34)	2,408 (34)	2,674 (22)
Webster	1,706 (36)	1,973 (44)	2,025 (63)	2,268 (54)	2,363 (49)
West Baton Rouge	2,120 (6)	2,461 (7)	2,737 (8)	2,810 (16)	2,763 (17)
West Carroll	1,802 (24)	2,017 (37)	2,332 (33)	2,443 (31)	2,576 (29)
West Feliciana	2,371 (3)	2,696 (3)	3,111 (4)	3,447 (2)	3,649 (2)
Winn	1,829 (21)	2,195 (19)	2,455 (24)	2,601 (23)	2,689 (21)
City of Monroe	1,730 (34)	1,896 (52)	2,100 (58)	2,294 (51)	2,478 (36)
City of Bogaluss	1,849 (20)	2,090 (30)	2,214 (44)	2,122 (64)	2,244 (60)
State*	1,728	2,085	2,436	2,591	2,598
Range	2,729- 1,224	3,129- 1,551	4,467- 1,763	5,875- 1,901	6,099- 1,892

SOURCE: Louisiana Department of Education, *Bulletin 1472*, 1979-1984.
*Average

(3)

Supreme Court, U.S.
FILED
JUN 8 19
JOSEPH E. SPANIOL, JR.
CLERK

NO. 87-1605

In the Supreme Court of the United States

OCTOBER TERM, 1987

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, Louisiana, et al.,
Petitioners

V.

LOUISIANNA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, et al.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Robert E. Harroun, III
General Counsel for
Respondent,
Joseph H. Burris
Legislative Auditor
1600 Riverside North
Baton Rouge, Louisiana 70804-9397
Telephone: (504) 342-7237

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

13 BP

QUESTIONS PRESENTED FOR REVIEW

In addition to the question presented in the briefs filed by co-respondents, the following question is presented for review:

> Whether the Legislative Auditor's authority to conduct post-audits of the financial transactions of Louisiana's State Department of Education, Treasurer's Office, and Board of Elementary and Secondary Education, includes the authority to administer the state's public school financing system?

TABLE OF CONTENTS

Page

Question Presented for Review.....i
Table of Contents.....ii
Table of Authorities.....iii
Opinions Below.....1
Jurisdiction.....1
Constitutional and Statutory Provisions.....1
Statement of the Case.....2
Summary of the Argument.....3
Argument.....3
Conclusion.....7
Appendix A
Constitutional and Statutory provisions.....A-1
Louisiana Constitution:
Article 3, Section 11.....A-1
Louisiana Revised Statutes:
R.S. 24:513.....A-1
R.S. 24:603.....A-2

TABLE OF AUTHORITIES

CASES **Page**

Avoyelles Sportsmen's League, Inc. et al. v. Marsh, 715 Federal 2nd 897, 5th Cir. (1983).....6

Louisiana Constitution:

Article 3, Section 11.....2,4

Louisiana Revised Statutes:

R.S. 24:513.....2,5

R.S. 24:603.....2,5

In the Supreme Court of the United States

OCTOBER TERM, 1987

87-1605

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, et al.,
Petitioners

V.

LOUISIANNA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, et al.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The citations to the opinions and judgments delivered in the courts below are adequately set forth in the Petition at pgs. 1 and 2.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition at pg. 2.

CONSTITUTIONAL AND STATUTORY PROVISIONS

In addition to the constitutional and statutory provisions cited in the briefs filed by co-respondents, the following constitutional and statutory provisions relating to the question presented for review herein are reproduced at Appendix A, infra, pg. A-1:

Louisiana Constitution of 1974:

Article 3, Section 11

Louisiana Revised Statutes:

R.S. 24:513
R.S. 24:603

STATEMENT OF THE CASE

In addition to the statement of facts appearing in the decisions of the District Court (Petitioners' Appendix A at pgs. 28a-43a) and the Court of Appeal (Petitioners' Appendix B, at pgs. 1a-27a) and in the briefs filed by co-respondents, the Legislative Auditor offers the following statement.

Petitioners have drawn respondent, Legislative Auditor (Auditor), into this controversy through allegations that the Auditor administers the state's public school financing system. Specifically, petitioners allege that the Auditor is responsible for (1) granting and/or enforcing tax exemptions from school and/or any other taxes; (2) delegating taxing powers for the support of public schools in Louisiana; (3) having taxing powers delegated to the Auditor for the support of public schools in Louisiana; (4) distributing state revenue sharing money and/or local tax avails for the support of public elementary and secondary schools in Louisiana; (5) appropriating and/or allocating state funds to the Minimum Foundation Program and/or the individual state boards; and (6) calculating, preparing, approving, and/or implementing the Minimum Foundation Program Formula upon which the allocation of state funds to public education is based.

Respondent, Auditor, along with co-respondents and petitioners, filed cross-motions for summary judgment. Citing applicable statutes and constitutional provisions, and submittiing uncontroverted affidavits, the Auditor argued that he possessed neither the power nor the authority to administer the state's public school financing system.

On February 21, 1986, the United States District Court, Middle District of Louisiana, heard oral arguments, after which summary judgment was granted as to respondent, Joseph H. Burris, Legislative Auditor for the State of Louisiana. The remaining motions were taken under submission.

Subsequently, the District Court denied petitioners' motion for summary judgment and sustained a motion for summary judgment filed by the remaining respondents thereby dismissing petitioners' action. The Court concluded that the Louisiana tax assessment/exemption/distribution system, as if affects the funding of public education in the State of Louisiana, does not violate Article IV, Section 2, or the Fourteenth Amendment, Section 1 of the United States Constitution.

On appeal to the Fifth Circuit Court of Appeals, the Distirct Court judgment was affirmed.

SUMMARY OF ARGUMENT

In addition to the summaries of argument presented by co-respondents, the following summary is presented by the Auditor.

The constitutional and statutory provisions creating the Office of Legislative Auditor, and prescribing his duties and functions, authorize the Auditor to conduct post-audits of the financial transactions of the state, its agencies, and its political subdivisions. The authority to conduct post-audits does not encompass the administration of the state's public school financing system. Thus, the opinions below granting the Auditor's motion for summary judgment and dismissing petitioners' claim are correct.

ARGUMENT

In addition to the arguments advanced by co-respondents, the following argument is presented by the Auditor.

LSA-Const. Art. 3, Section 11 is the constitutional provision which establishes and continues the Office of Legislative Auditor. It stipulates that the Auditor shall perform the duties and functions provided by law related to auditing fiscal records of the state, its agencies, and political subdivisions. The law prescribing the duties and functions relating to the audit of fiscal records of the state, its agencies, and political subdivisions is found at LSA-R.S. 24:513. It gives the Auditor the authority to examine and audit the books and accounts of the State Treasurer, as well as all public boards and commissions, or any agency or department or political subdivision of the state, or any public official or employee.

It is clear from these constitutional and statutory provisions that the Auditor's powers and duties are limited to the post-audit of the financial transactions of the state, its agencies, and political subdivisions. Despite petitioners' erroneous and unsupported assumptions to the contrary, there is absolutely no legal authority which requires or permits the Auditor to impose taxes, grant tax exemptions, distribute revenue sharing funds, implement the Minimum Foundation Program Formula, and/or distribute the Minimum Foundation Program funds. In the absence of such authority, the Auditor respectfully submits that he does not now perform, nor has he ever performed, any of the functions which form the basis upon which petitioners seek to join him as a party to this litigation. (See the uncontroverted affidavit of Joseph H. Burris, Legislative Auditor, at pgs. 131-133 of the original record.)

Petitioners erroneously speculate that the Auditor participates in the preparation of "SRS Forms" (i.e., those documents containing the calculations which form the basis for the distribution of state revenue sharing money to the various taxing authorities). As can be seen from the

uncontroverted affidavit of Vernon W. Dugas, past Director of Audit Support Services, the Legislative Auditor's Office does not participate in the preparation of said forms. (See affidavit at pgs. 232-233 of the original record).

Although the Auditor conducts post-audits of Louisiana's Board of Elementary and Secondary Education, Department of Education, and State Treasurer, as required by LSA R.S. 24:513, these audits do not establish the slightest nexus between respondent and petitioners' allegations. The uncontroverted affidavit of Grover C. Austin, Assistant Legislative Auditor, establishes that the audit reports resulting from these post-audits constitute reports on financial and compliance audits. As such, they neither address nor make recommendations, comments and/or guidelines relative to the issues of the equitability, legality and/or constitutionality of the State Revenue Sharing Act, the Minimum Foundation Program Formula, and/or the distribution of state moneys thereunder. (See affidavit at pgs. 234-236 of the original record).

Petitioners further erroneously speculate that respondent has the duty to advise the Louisiana Legislature with respect to the alleged need to correct the Revenue Sharing Acts and the Minimum Foundation Program Formula. This suggestion is completely without merit. First, it offends the intent of the redactors of our Louisiana Constitution that the Auditor's fiscal advice relate to auditing functions and not to the social, economic, and political remifications of legislating. (See pgs. 237-240 of the original record.)

Second, to impose such a duty upon the Auditor would infringe upon the powers and duties of the Legislative Fiscal Office enumerated in LSA R.S. 24:603.

The post-audits conducted by the Auditor are governed by the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," promulgated by the Comptroller General of the United States. Respondent respectfully submits that for him to assume the role of critic of the legislation relating to revenue sharing and the Minimum Foundation Program Formula, or assumed the role of administrator of the distribution of funds thereunder, would constitute involvement in the legislature's and co-respondents' decision-making and management capacities. Such involvement would result in an unacceptable impairment to the Auditor's independence in carryinng out subsequent post-audit functions.

Respondent further submits that the interpretation given by the redactors of the Louisiana Constitution, the members of the Legislature, and respondent's own officers and employees to the constitutional and statutory provisions regulating respondent's operations has historically been, and continues to be, that respondent's audit authority does not extend to advising the legislature as to the equitability, constitutionality and/or legality vel non of legislation, specifically, the Revenue Sharing Act, the Miminum Foundation Program Formula, and the distribution of state moneys thereunder.

Although respondent realizes that the judiciary is the final arbiter of statutory construction, the interpretation given by the officers or agency charged with its administration is entitled to substantial weight, and an agency's construction of its own regulations is entitled to even greater deference. *Avoyelles Sportsmen's League, Inc., et al v. Marsh*, 715 F.2d 897, 5th Cir. (1983).

CONCLUSION

The undisputed facts clearly indicate that respondent's post-audit functions and duties do not extend to administering the state's public school financing system. For these reasons, in addition to the reasons stated by co-respondents in their briefs, it is respectfully submitted that that Petition for Certiorari should be denied.

Respectfully submitted,

Robert E. Harroun, III
Attorney for Respondent
Joseph H. Burris
Legislative Auditor
1600 Riverside North
Baton Rouge, Louisiana 70804-9397
Telephone: (504) 342-7237

APPENDIX A

LOUISIANA CONSTITUTION
ARTICLE 3

&11. Legislative Auditor

Section 11. There shall be a legislative auditor responsible solely to the legislature. He shall serve as a fiscal advisor to it and shall perform the duties and functions provided by law related to auditing fiscal records of the state, its agencies, and political subdivisions. He shall be elected by the concurrence of a majority of the elected members of each house and may be removed by the concurrence of two/thirds of the elected members of each house.

LOUISIANA REVISED STATUTES, TITLE 24

* * * *

&513. Powers and duties of Legislative Auditor; audit reports as public records; assistance and opinions of attorney general; frequency of audits.

A. The legislative auditor shall have authority to examine and audit the books and accounts of the state treasurer as well as all public boards and commissions, or any agency or department or political subdivision of the state, or any public official or employee and shall have access to all papers, books, documents, films, tapes, and any other forms of recordation, including but not limited to computers and recording devices, in all offices which he may examine or audit under the provisions of this Chapter....

* * * *

& 603. Duties and functions

Subject to the general direction and supervision of the Joint Legislative Committee on the Budget, the legislative fiscal office shall have the following duties and functions:

(1) To develope and make available to the legislature and its committees such fiscal information as will assist the legislature or any legislative committee in its deliberations with the view of pointing out unnecessary programs, projects, and functions; calling attention to inefficient and uneconomical practices; making recommendations for improvement, and carrying out other similar functions.

(2) To continuously review existing and proposed programs and budgets of state agencies.

* * *

(5) To conduct other studies and perform other duties which may be of assistance in directing the financial affairs of the state.

(6) To perform, at the direction of either house or any committee thereof, in-depth studies of programs or statewide policies including studies of a program's accomplishments, the manner in which a program's appropriation has been expended, and the future direction of a program.

* * *

(18) To develop and maintain a comprehensive information system on the receipt of revenues by local governmental subdivisions and political subdivisions from local, state, and federal sources, as well as the expenditures of these revenues and to submit a summary of this information annually to the legislature.

No. 87-1605

In The
Supreme Court of the United States

OCTOBER TERM, 1987

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, ET AL.,

Petitioners,

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN RESPONSE TO PETITION FOR CERTIORARI

WILLIAM J. GUSTE, JR.
Attorney General

WINSTON G. DECUIR*
Chief, Civil Division

MARTHA S. HESS
Assistant Attorney General

COUNSEL FOR RESPONDENT, LOUISIANA STATE TREASURER

Louisiana Department of Justice
State Capitol, 22nd Floor
P. O. Box 94005
Capital Station
Baton Rouge, LA 70804
Telephone: 504-342-7013

*Counsel of Record

QUESTION PRESENTED FOR REVIEW

This brief in response to the Petition for Certiorari presents, in addition to the questions set forth in the briefs of co-respondents, the following question for the Court's consideration:

> Whether the State Treasurer's authority to make distributions and transfers of state monies as appropriated by acts of the State Legislature for the State's Minimum Foundation Program, and to distribute to tax recipient bodies state revenue sharing monies, includes the authority to administer the state's public school financing system?

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	2
Constitutional and Statutory Provisions	2
Statement of the Case	2
Summary of Argument	2
Argument	3
Conclusion	5
Appendix	1a

TABLE OF AUTHORITIES

Page

Cases

Poirrier v. St. James Police Jury, 537 F.2d 841 (5th Cir. 1976) 5

Louisiana Constitution

Article IV, Section 9 2,3
Article VII, Section 20 2,4
Article VII, Section 21 2,4

In The
Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-1605

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, ET AL.,

Petitioners,

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondent, Mary Evelyn Parker, Treasurer of the State of Louisiana, respectfully prays that a writ of certiorari not issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered October 22, 1987 (rehearing denied December 28, 1987), which affirmed the judgment of the United States District Court for the Middle District of Louisiana, as said judgments are correct.

OPINIONS BELOW

The citations to the opinions and judgments delivered in the courts below are adequately set forth by Petitioners at pgs. 1 and 2 of their Writ Application.

CONSTITUTIONAL AND STATUTORY PROVISIONS

In addition to the constitutional and statutory provisions cited in the briefs filed on behalf of co-respondents, the following constitutional and statutory provisions relating to the question presented for consideration herein are reproduced at Appendix A, infra, p. la:

Louisiana Constitution of 1974:

Article IV, Section 9

Article VII, Section 20

Article VII, Section 21

STATEMENT OF THE CASE

Mary Evelyn Parker, Treasurer of the State of Louisiana adopts and incorporates by reference herein the statement of facts appearing in the decisions of the District Court (Petitioners' Appendix A at pages 28a-43a) and the Court of Appeal (Petitioners' Appendix B, at pages 1a-27a) and the briefs filed by co-respondents.

SUMMARY OF ARGUMENT

In addition to the summary of argument presented by co-respondents, the following summary is presented.

The constitutional and statutory provisions creating the Department of the Treasury, and prescribing the duties and functions of the State Treasurer, authorize the

State Treasurer to perform her ministerial duties of making distributions and transfers of state revenue sharing monies to the respective parishes who in turn distribute these monies to the eligible recipients of the parish that participate in state revenue sharing. The State Treasurer is also authorized to perform her ministerial duties of distributing the Minimum Foundation Program funds. Therefore, the opinions below granting respondent, Mary Evelyn Parker, Louisiana State Treasurer's motion for summary judgment and dismissing petitioners' claim are correct.

ARGUMENT

In addition to the arguments advanced by co-respondents, which the Louisiana State Treasurer adopts and incorporates by reference herein, the Louisiana State Treasurer argues as follows:

The allegations in petitioners' complaint, as amended, relating to the Treasurer are limited to the statement that the Treasurer makes distributions and transfers of state revenue sharing monies to school boards in the administration of tax exemptions and distribution of state revenue sharing.

The Louisiana Constitution, Article IV, Section 9, sets forth the powers and duties of the Louisiana State Treasurer as follows:

> Section 9. There shall be a Department of the Treasury. The treasurer shall head the department and shall be responsible for the custody, investment, and disbursement of the public funds of the state, except as otherwise provided by this constitution. He shall report annually to

> the governor and to the legislature at least one month before each regular session on the financial condition of the state, and shall have other powers and perform other duties authorized by this constitution or provided by law.

The statutory duties of the State Treasurer do include making distributions and transfers of state revenue sharing monies to the respective parishes who in turn distribute those monies to the eligible recipients of the parish that participate in state revenue sharing. The state treasurer does not administer tax exemptions, as exemptions from ad valorem taxes are constitutional. See Louisiana Constitution of 1974, Article VII, Sections 20 and 21.

There is no legal authority which empowers, authorizes, requires or permits the State Treasurer to either grant and/or enforce tax exemptions from school and/or any other taxes; delegate taxing powers for the support of public schools; or to have such taxing powers delegated to her for the support of public schools in Louisiana.

The powers, duties and authorities incumbent upon the State Treasurer do not include advising the legislature or the legislative auditor with respect to the merits of revenue sharing or the Minimum Foundation Program; nor is the Treasurer charged with administering the state's public school financing system. The Treasurer exercises no independent discretion in making any distributions, as appropriations for elementary and secondary education are made by the Louisiana Legislature in the annual revenue sharing act, which act is neither drafted nor sponsored by the State Treasurer. Further, the funding formula for the State's Minimum Foundation Pro-

gram is adopted by the State Board of Elementary and Secondary Education and approved by the Legislature. The State Treasurer has no legislative role in the adoption of the Minimum Foundation Program Formula.

As noted in the case of *Poirrier v. St. James Police Jury*, 537 F.2d 841 (5th Cir. 1976) "only if the complaint states an independent claim against the parochial bodies can they properly be joined as defendants . . ." The petitioners did not state an independent claim against respondent, Mary Evelyn Parker.

CONCLUSION

The undisputed facts clearly indicate respondent's functions and duties are purely ministerial in nature and do not extend to administering the state's public schools financing system. For these reasons, in addition to the reasons stated by co-respondent, Louisiana Board of Elementary and Secondary Education, it is respectfully submitted that the Petition for Certiorari should be denied.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
Attorney General

WINSTON G. DECUIR*
Chief, Civil Division

MARTHA S. HESS
Assistant Attorney General

COUNSEL FOR
RESPONDENT,
MARY EVELYN PARKER

LOUISIANA DEPARTMENT
OF JUSTICE
P. O. Box 94005-Capitol Station
Baton Rouge, LA 70804-9005
Telephone: 504/342-7013

*Counsel of Record

APPENDIX

TABLE OF CONTENTS

Page

Appendix A—
Constitutional and Statutory Provisions 1a
Louisiana Constitution of 1974:
Article IV, Section 9 ..... 1a
Article VII, Section 20 ..... 1a
Article VII, Section 21 ..... 2a

LOUISIANA CONSTITUTION

ARTICLE IV

* * * * * *

§9. Treasurer; Powers and Duties

Section 9. There shall be a Department of the Treasury. The treasurer shall head the department and shall be responsible for the custody, investment, and disbursement of the public funds of the state, except as otherwise provided by this constitution. He shall report annually to the governor and to the legislature at least one month before each regular session on the financial condition of the state, and shall have other powers and perform other duties authorized by this constitution or provided by law.

ARTICLE VII

* * * * * *

§20. Homestead Exemption

Section 20. (A) Homeowners

(1) The bona fide homestead, consisting of a tract of land or two or more tracts of land with a residence on one tract and a field, pasture, or garden on the other tract or tracts, not exceeding one hundred sixty acres, buildings and appurtenances, whether rural or urban, owned and occupied by any person, shall be exempt from state, parish, and special ad valorem taxes to the extent of seven thousand five hundred dollars of the assessed valuation.

(2) The homestead exemption shall extend to the surviving spouse or minor children of a deceased owner and shall apply when the homestead is occupied as such and title to it is in either husband or wife but not to more than one homestead owned by the husband or wife.

(3) This exemption shall not extend to municipal taxes. However, the exemption shall apply (a) in Orleans Parish, to state, general city, school, levee, and levee district taxes and (b) to any municipal taxes levied for school purposes.

(B) Residential Lessees. Notwithstanding any contrary provision in this constitution, the legislature may provide for tax relief to residential lessees in the form of credits or rebates in order to provide equitable tax relief similar to that granted to homeowners through homestead exemptions.

* * * * * *

§21. Other Property Exemptions

Section 21. In addition to the homestead exemption provided for in Section 20 of the Article, the following property and no other shall be exempt from ad valorem taxation:

(A) Public lands; other public property used for public purposes.

(B)(1) Property owned by a nonprofit corporation or association organized and operated exclusively for religious, dedicated places of burial, charitable, health, welfare, fraternal, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or member thereof and which is declared to be exempt from federal or state income tax;

(2) property of a bona fide labor organization representing its members of affiliates in collective bargaining efforts; and

(3) property of an organization such as a lodge or club

organized for charitable and fraternal purposes and practicing the same, and property of a nonprofit corporation devoted to promoting trade, travel, and commerce, and also property of a trade, business, industry or professional society or association, if that property is owned by a nonprofit corporation or association organized under the laws of this state for such purposes.

None of the property listed in Paragraph (B) shall be exempt if owned, operated, leased, or used for commercial purposes unrelated to the exempt purposes of the corporation or association:

(C)(1) Cash on hand or deposit;

(2) stocks and bonds, except bank stocks, the tax on which shall be paid by the banking institution;

(3) obligations secured by mortgage on property located in Louisiana and the notes or other evidence thereof;

(4) loans by life insurance companies to policyholders, if secured solely by their policies;

(5) the legal reserve of domestic life insurance companies;

(6) loans by a homestead or building and loan association to its members, if secured solely by stock of the association;

(7) debts due for merchandise or other articles of commerce or for services rendered;

(8) obligations of the state or its political subdivisions;

(9) personal property used in the home or on loan in a public place;

(10) irrevocably dedicated places of burial held by individuals for purposes of burial of themselves or members of their families.

(11) agricultural products while owned by the producer, agricultural machinery and other implements used exclusively for agricultural purposes, animals on the farm, and property belonging to an agricultural fair association;

(12) property used for cultural, Mardi Gras carnival, or civil activities and not operated for profit to the owners;

(13) rights-of-way granted to the State Department of Highways;

(14) boats using gasoline as motor fuel;

(15) commercial vessels used for gathering seafood for human consumption; and

(16) ships and oceangoing tugs, towboats, and barges engaged in international trade and domiciled in Louisiana ports. However, this exemption shall not apply to harbor, wharf, shed, and other port dues or to any vessel operated in the coastal trade of the states of the United States.

(17) Materials, boiler fuels, and energy sources used by public utilities to fuel the generation of electricity.

(D)(1) Raw materials, goods, commodities, and articles imported into this state from outside the states of the United States:

(a) so long as the imports remain on the public property of the port authority or docks of

the common carrier where they first entered this state;

(b) so long as the imports (other than minerals and ores of the same kind as any mined or produced in this state and manufactured articles) are held in this state in the original form in bales, sacks, barrels, boxes, cartons, containers, or other original packages, and raw materials held in bulk as all or a part of the new material inventory of manufacturers or processors, solely for manufacturing or processing; or

(c) so long as the imports are held by an importer in any public or private storage in the original form in bales, sacks, barrels, boxes, cartons, containers, or other original packages and agricultural products in bulk. This exemption shall not apply to these imports when held by a retail merchant as part of his stock-in-trade for sale at retail.

(2) Raw materials, goods, commodities, and other articles being held on the public property of a port authority, on docks of any common carrier, or in a warehouse, grain elevator, dock, wharf, or public storage facility in this state for export to a point outside the states of the United States.

(3) Goods, commodities, and personal property in public or private storage while in transit through this state which are moving in interstate commerce through or over the territory of the state or which are in public or private storage within Louisiana, having been shipped from outside Louisiana for storage in transit to a final destination outside Louisiana, whether such destination was specified when transportation began or afterward.

Property described in Paragraph (D), whether or not entitled to exemption, shall be reported to the proper taxing authority on the forms required by law.

(E) Motor vehicles used on the public highways of this state, from state, parish, and special ad valorem taxes. This exemption shall not extend to any general or special tax levied by a municipal governing authority, or by a district created by it, unless the governing authority thereof provides for the exemption by ordinance or resolution.

(F) Notwithstanding any contrary provision of this Section, the State Board of Commerce and Industry or its successor, with the approval of the governor, may enter into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state.

The exemption shall be for an initial term of no more than five calendar years, and may be renewed for an additional five years. All property exempted shall be listed on the assessment rolls and submitted to the Louisiana Tax Commission or its successor, but no taxes shall be collected thereon during the period of exemption.

The terms "manufacturing establishment" and "addition" as used herein mean a new plant of establishment or an addition or additions to any existing plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process.

(G) Coal or lignite stockpiled in Louisiana for use in Louisiana for industrial or manufacturing purposes or for boiler fuel, gasification, feedstock, or process purposes.

(H) Notwithstanding any contrary provision of this constitution, the State Board of Commerce and Industry or its successor, with the approval of the governor and the local governing authority and in accordance with procedures and conditions provided by law, may enter into contracts granting to a property owner, who proposes the expansion, restoration, improvement, or development of an existing structure or structures in a downtown, historic, or economic development district established by a local governing authority or in accordance with law, the right for five years after completion of the work to pay ad valorem taxes based upon the assessed valuation of the property for the year prior to the commencement of the expansion, restoration, improvement, or development.

B-9045,65,6/88